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सं. 53] नई दिल्ली, दिसम्बर 31, 2023—जनवरी 6, 2024, शनिवार/पौष 10—पौष 16, 1945
No. 53] NEW DELHI, DECEMBER 31, 2023—JANUARY 6, 2024, SATURDAY/PAUSHA 10—PAUSHA 16, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 20 अप्रैल, 2023

का.आ. 1905.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सहायक निदेशक (एचआरडी-टी), भारत संचार निगम लि., जयपुर; जिला प्रबन्धक, भारत संचार निगम लि., झालावाड़; उपखण्ड अधिकारी, भारत संचार निगम लि., अकलेरा, के प्रबंधन के संबंध में नियोजकों और श्रीमति मांगीबाई, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक न्यायाधिकरण कोटा, विवाद में औद्योगिक न्यायाधिकरण कोटा, पंचाट आई टी (केंद्रीय)-14/2008 (सीआईएस-71/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 22/03/2023 को प्राप्त हुआ था।

[सं. एल- 40012/67/2007-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th April, 2023

S.O. 1905.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award I.T.(Central)- 14/2008(CIS&71/2014) of the Industrial Tribunal Kota, as shown in the Annexure, in the Industrial dispute between the employers in relation to **Assistant Director (HRD-T), Bharat Sanchar Nigam Limited, Jaipur; District Manager, Bharat Sanchar Nigam Limited, Aklera, and Smt. Mangi Bai Worker**, which was received along with soft copy of the award by the Central Government on 22/03/2023.

[No. L- 40012/67/2007- IR (DU)]

D. K. HIMANSHU, Under Secy.

अनुलग्नक

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्री महेश पुनेठा, आर.जे.एस. (जिला जज संवर्ग)

निर्देश प्रकरण क्रमांक:ओ.न्या.(केन्द्रीय)—14 / 2008(सीआईएस—71 / 2014)

(सीएनआर—आरजेकेटी 060001602008)

दिनांक स्थापित: 17 / 06 / 2008

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क.

एल—40012 / 67 / 2007(आईआर(डीयू))

दि. 23 / 05 / 2008

निर्देश / विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क)औद्योगिक विवाद अधिनियम, 1947मध्य

श्रीमती मांगीबाई पत्नी स्व. लक्ष्मीनारायण, न्यू म्युनिसिपल भवन के पीछे, रावण जी का चौक, अकलेरा, जिला झालावाड़ (राज.)।

—प्रार्थीया श्रमिक

एवं

1—सहायक निदेशक(एचआरडी—I), भारत संचार निगम लि., कार्यालय मुख्य महाप्रबन्धक, दूर संचार राज., दूर संचार परिमण्डल, भारत सरकार निगम लि., जयपुर।

2—जिला प्रबन्धक, भारत संचार निगम लि., झालावाड़।

3—उपखण्ड अधिकारी, भारत संचार निगम लि., अकलेरा

जिला झालावाड़।

—अप्रार्थीगण नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि:—

श्री डी. आर. द्विवेदी

अप्रार्थी नियोजक की ओर से प्रतिनिधि:—

श्री पुष्पेन्द्र सिंह चौहान

::अधिनिर्णय::

दि.: 29 / 06 / 2022

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 23 / 05 / 2008 के जरिये निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

"Whether the action of management of Sub-Divisional Officer, BSNL, Aklera, in terminating the services of their workman Smt. Mangi Bai w.e.f. 01/03/2007 is legal and justified? If not, to what relief the workman is entitled to?"

2—उक्त विवाद, न्यायाधिकरण में रेफर होने पर पंजीबद्ध कर पक्षकारों को उपस्थिति बाबत नोटिस जारी किए गए। नोटिस की पालना में प्रार्थीया श्रमिक द्वारा उपस्थित होकर स्टेटमेंट ऑफ क्लेम न्यायाधिकरण के समक्ष प्रस्तुत कर संक्षिप्त: यह कथन किया गया है कि प्रार्थीया को अप्रार्थीगण नियोजक जिला प्रबन्धक, भारत संचार निगम लिमिटेड, झालावाड़ वगैरह द्वारा वर्ष 1991 के पूर्व से दूरभाष केन्द्र, अकलेरा में पानी भरने, पिलाने व सफाई कार्य के लिए नियोजित किया गया था, तब से वह लगातार कार्य करती चली आ रही थी। प्रार्थीया की भौति ही अन्य दूरभाष केन्द्रों पर कार्यरत श्रमिक श्रीमती छोटी बाई को भवानीमण्डी जिला झालावाड़ व श्रमिक मनोहर तथा रामकिशन को झालावाड़ में लगभग तीन वर्ष पूर्व स्थाई

नियुक्ति दे दी गयी जोकि प्रार्थीया से कनिष्ठ थे, जबकि प्रार्थीया द्वारा उसे स्थाई किये जाने हेतु आवेदन प्रस्तुत करने पर अप्रार्थी नं. 2 ने यह कहते हुए मना कर दिया कि प्रार्थीया ने लगातार काम नहीं करके केवल कभी-कभी ही काम किया है। प्रार्थीया ने वर्ष 1991 से फरवरी, 2007 तक लगातार अप्रार्थीगण के यहाँ कार्य किया है तथा उसने अप्रार्थीगण को अभिभाषक के माध्यम से नोटिस भी दिलवाया था, किन्तु नोटिस प्राप्ति के बाद उसे दि.01/03/2007 से सेवा से हटा दिया गया, जबकि सेवा पृथक्करण/छंटनी से पूर्व उसे ना तो कोई नोटिस, नोटिस वेतन व मुआवजा दिया व ना ही प्रस्तावित किया जोकि अधिनियम की धारा 25-एफ के प्रावधानों के विपरीत होने से उचित एवं वैध नहीं है। अन्त में प्रार्थना की गयी है कि उसे उक्त प्रकार से सेवा से पृथक् किया जाना अनुचित व अवैध घोषित करते हुए दि. 01/03/2007 से ही सेवा की निरन्तरता, पिछले सम्पूर्ण वेतन व सेवा लाभों सहित पुनः सेवा में स्थापित किये जाने का अनुतोष प्रदान किया जावे व साथ ही कनिष्ठ श्रमिकों को स्थायी किये जाने की तिथि से ही स्थायी किया जावे।

3-अप्रार्थीगण नियोजक की ओर से उक्त क्लेम का जवाब प्रस्तुत कर यह प्रतिवाद किया गया है कि प्रार्थीया को वर्ष 1991 अथवा इससे पूर्व नियोजन में नहीं रखा गया, अर्थात् वह कभी अप्रार्थीगण के नियोजन में ही नहीं रही, अतः उसके अन्य श्रमिकों से कनिष्ठता व वरिष्ठता का प्रश्न ही उत्पन्न नहीं होता। प्रार्थीया के आवेदन पर जाँच उपरान्त उसके द्वारा निरन्तर एवं पूर्णकालिक कार्य किया जाना नहीं पाया गया तथा आकस्मिक यदा-कदा सेवा प्रदाता(ठेका) के रूप में कार्य कर लिये जाने से वह कोई लाभ प्राप्त करने की अधिकारिणी नहीं है। कथन किया है कि जब प्रार्थीया ने कार्य ही नहीं किया तो उसे दि. 01/03/2007 से अप्रार्थी क्रम 3 द्वारा सेवा से हटाये जाने का प्रश्न ही उत्पन्न नहीं होता और ऐसे में अधिनियमान्तर्गत उसे कोई नोटिस अथवा नोटिस वेतन व मुआवजा दिया जाना आवश्यक नहीं रहा। विशेष कथन जवाब में अंकित किया है कि दैनिक सफाई कार्य हेतु कार्यालय प्रभारी अधिकारी द्वारा किसी भी सेवा प्रदाता की सेवाएं ले ली जाती है जो कार्य प्रतिदिन मात्र एक घन्टे से भी कम का होता है और माह में जितने घंटे की सेवाएं दी जाती हैं, उस अनुसार भुगतान कर दिया जाता है तथा पानी पिलाने हेतु किसी श्रमिक की सेवाएं नहीं ली जाती। प्रार्थीया ने आकस्मिक रूप से पूर्व वर्षों में मात्र 2-3 माह ही सेवा प्रदाता के रूप में कार्य किया है और उसे उसका भुगतान किया जा चुका है। अन्य दूरभाष केंद्रों में कार्यरत श्रमिकों को स्थायी नियुक्ति देना स्वीकार है। अन्त में प्रार्थना की गयी है कि प्रार्थीया का क्लेम निराधार तथ्यों का होने से सव्यय निरस्त किया जावे।

4-साक्ष्य में स्वयं प्रार्थीया श्रमिक मांगीबाई तथा अप्रार्थी साक्षी राधेश्याम मीणा, जेटीओ के शपथ-पत्र प्रस्तुत किए जिनसे एक-दूसरे पक्ष द्वारा जिरह की गयी। उभय पक्ष की ओर से दस्तावेजी साक्ष्य भी प्रस्तुत की गयी जिसका यथासमय उल्लेख किया जावेगा।

5-उभयपक्ष के प्रतिनिधिगण की बहस सुनी गयी जो बहस मुख्यतः उनके द्वारा प्रस्तुत अपने-अपने अभ्यावेदनों पर ही आधारित रही है। प्रार्थीया पक्ष ने अपनी बहस समर्थन में न्यायिक दृष्टांत आर.एम.येल्लदी बनाम असि. एक्जीक्यूटिव इंजीनियर-अपील (सिविल) संख्या 5124/2004-निर्णय दि. 07/11/2005, रामप्रसाद माली बनाम रीजनल ऑफिसर-2017(2) डबल्यूएलसी (राज.) 637 तथा गौरीशंकर बनाम स्टेट ऑफ राज.-एस.सी. सिविल अपील संख्या 3701/2015-निर्णय दि.16 अप्रैल, 2015 का अवलम्ब लिया है।

6-पत्रावली का ध्यानपूर्वक अवलोकन किया व प्रस्तुत न्यायिक दृष्टांतों के अध्ययनोपरान्त मार्गदर्शन प्राप्त किया। प्रार्थीया ने अपने क्लेम में यह तथ्य वर्णित किया है कि वह वर्ष 1991 से फरवरी, 2007 तक अप्रार्थीगण की सेवा में रही है और उसने अकलेरा टेलीफोन एक्सचेंज पर लगातार कार्य किया है जिसको साबित करने के लिए अकलेरा में अनेक गवाह मौजूद हैं। इस प्रकार प्रार्थी ने वर्ष 91 से फरवरी, 2007 तक अकलेरा टेलीफोन एक्सचेंज पर कार्य करने का तथ्य बतलाया है, लेकिन प्रार्थीया ने इस सम्बन्ध में कोई दस्तावेजी साक्ष्य पेश नहीं किया है जिससे प्रथमदृष्टया यह प्रकट हो रहा हो कि उसने वर्ष 91 से फरवरी, 2007 तक अकलेरा टेलीफोन एक्सचेंज में कार्य किया हो। अप्रार्थीगण का यह स्पष्ट रूप से कथन रहा है कि प्रार्थीया की ओर से प्रस्तुत आवेदनों की जाँच करवाये जाने पर यह पाया गया कि उसने निरन्तर एवं पूर्णकालिक रूप में कार्य नहीं किया है बल्कि आकस्मिक रूप में उससे यदा-कदा सेवा प्रदाता(ठेके) के रूप में कार्य किया लिया गया है और जो दस्तावेज अप्रार्थीगण की ओर से प्रस्तुत किये गये हैं उनसे भी यह प्रकट हो रहा है कि प्रार्थीया कभी निरन्तर कार्य पर नहीं रही। प्रार्थीया की ओर से भी ऐसा कोई भी दस्तावेज पेश नहीं किया गया है जिससे प्रथमदृष्टया यह प्रकट हो रहा हो कि उसने क्लेम प्रार्थना-पत्र में वर्णित अवधि वर्ष 91 से फरवरी, 2007 के मध्य लगातार कोई कार्य किया हो। प्रार्थीया की ओर से अपने कथनों के समर्थन में दस्तावेज प्रदर्श डबल्यू.1 लगायत डबल्यू.13 प्रस्तुत किये गये हैं जिनमें प्रदर्श डबल्यू.1 का अवलोकन करें तो इससे यह कहीं प्रकट नहीं हो रहा है कि यह प्रार्थीया द्वारा किस तारीख को मुख्य महाप्रबन्धक, बीएसएनएल को दिया गया है, किन्तु मुख्य महाप्रबन्धक कार्यालय की रिसिप्ट मोहर के अनुसार उक्त प्रार्थना-पत्र 5 अप्रैल, 2004 को उन्हें प्राप्त होना प्रकट होता है। उक्त प्रार्थना-पत्र में प्रार्थीया ने पिछले 13 वर्षों से कार्य करना बतलाया है, लेकिन इसमें भी कब से कार्य कर रही है, कोई तिथि अंकित नहीं है, ना ही इसके साथ कोई दस्तावेज मुख्य महाप्रबन्धक को प्रेषित किया है। प्रदर्श डबल्यू.2 जनरल सेक्रेटरी, बीएसएनएल एम्प्लॉयज, नई दिल्ली को प्रार्थीया द्वारा प्रेषित स्टाम्प पेपर है जिसमें उसने उसे स्थायी करवाने हेतु निवेदन किया है, इसमें भी कोई तारीख अंकित नहीं है, लेकिन लगभग 14 वर्षों से अकलेरा दूरसंचार विभाग में पानी भरने व सफाई आदि कार्य करना अंकित किया है। इस स्टाम्प पेपर की पुश्त पर स्टाम्प वेण्डर की सील लगी हुई जिसमें विक्रय के दिवस की तिथि 19/09/05 अंकित है, जबकि इसके मुख्य पृष्ठ पर रामनारायण राठौर नामक गवाह ने अपने हस्ताक्षर के नीचे तारीख 20/4/2004 अंकित की है। इस प्रकार यह दस्तावेज भी उपरोक्त विरोधाभासों के परिप्रेक्ष्य में विश्वसनीय प्रतीत नहीं होता है। प्रदर्श डबल्यू.3 अध्यक्ष नगरपालिका, अकलेरा द्वारा जनरल सेक्रेटरी, बीएसएनएल, नई दिल्ली को लिखा गया पत्र है जिस पर 29/9/05 की तिथि अंकित है। प्रदर्श डबल्यू.4 महाप्रबन्धक, भारत संचार नि.लि.कोटा को प्रार्थीया द्वारा लिखा गया पत्र पेश किया गया है, लेकिन इस पत्र पर प्रार्थीया के कहीं हस्ताक्षर नहीं हैं और इस पत्र में प्रेषित की दिनांक 2/3/05 को काटकर 17/2/07 लिखा है, लेकिन उक्त कटिंग पर कोई हस्ताक्षर नहीं है, इस प्रकार यह पत्र किसके द्वारा कब भेजा गया, यह भी संदेहास्पद प्रकट हो रहा है। इस पत्र के चरण संख्या 2 में भी प्रार्थीया ने अकलेरा टेलीफोन एक्सचेंज में विगत 13 वर्षों से डेली वेजेज पर कार्य करना बताया है और उसके द्वारा पूर्व प्रेषित पत्र जोकि वर्ष 2004 में प्रेषित किये गये हैं, उनमें भी 13 ही वर्ष कार्य करना बताया है। इस प्रकार उपरोक्त वर्णित पत्रों के तथ्यों में भी महत्वपूर्ण बिन्दुओं पर विरोधाभास प्रकट हो रहा है। इसके अतिरिक्त प्रार्थीया ने अपने कथनों के समर्थन में प्रदर्श डबल्यू.8 लगायत डबल्यू.13 मनीऑर्डर की रसीदें प्रेषित करना बताया है जिनका यदि अवलोकन किया जाये तो मूल रसीदें पेश नहीं की गयी हैं, उक्त रसीदों पर पोस्ट ऑफिस की कोई मोहर भी अंकित नहीं है। उक्त दस्तावेजों में माह जुलाई, 94 की दो रसीदें हैं जिनमें एक रसीद पानी भरने के भुगतान रु. 60/- की व दूसरी रसीद सफाई चार्ज के भुगतान रु. 40/- की है, अगली दूसरी रसीदें पानी भरने व सफाई कार्य के भुगतान की क्रमशः 60/- व 40/- रुपये की हैं और इसी प्रकार माह नवम्बर, 94 के पानी भरने व सफाई कार्य की रसीदें क्रमशः 60/- व 40/- रुपये की हैं। इन दस्तावेजात के अतिरिक्त प्रार्थीया द्वारा कोई भी ऐसा अन्य दस्तावेज जिसके कि

द्वारा प्रार्थीया को बाद के वर्षों में कार्य के पेटे अन्यथा प्रकार से भुगतान किया गया हो, प्रस्तुत नहीं किया गया है, जबकि उसका दौरान जिरह में यह कथन रहा है कि उसे सन् 1994 तक मनीऑर्डर से मजदूरी मिलती थी, उसने मनीऑर्डर की सारी रसीदें न्यायालय की पत्रावली पर पेश कर दी हैं, जो गुम गयी उन्हें पेश नहीं किया है। इस प्रकार जबकि प्रार्थीया वर्ष 1991 से 1994 तक मनीऑर्डर से भुगतान प्राप्त करना बता रही है, किन्तु उसकी ओर से मात्र तीन माह की ही रसीदें प्रस्तुत की गयी हैं जिससे यह कहीं प्रकट नहीं हो रहा है कि उसके द्वारा अप्रार्थीगण के यहाँ बतलायी गयी अवधि में अकलेरा टेलीफोन एक्सचेंज में निरन्तर कार्य किया गया हो। यहाँ यह भी ध्यान में रखे जाने योग्य है कि प्रार्थीया द्वारा प्रस्तुत की गयी मनीऑर्डर की रसीदों से एवं अप्रार्थीगण की ओर से जो दस्तावेजात प्रस्तुत किये गये हैं, उनमें पानी भरने तथा सफाई कार्य करने बाबत भुगतान पृथक-पृथक किया गया है। सफाई कार्य के भुगतान की दर अलग है तो पानी भरने के कार्य के भुगतान की दर अलग है और जैसा कि प्रार्थीया बता रही है कि उसको अकलेरा टेलीफोन एक्सचेंज में उक्त कार्य के लिए नियोजित किया गया था तो फिर क्योंकि उसे अलग-अलग मद से भुगतान किया जाता रहा इस तथ्य को भी प्रार्थीया द्वारा स्पष्ट नहीं किया गया है ऐसी स्थिति में यह प्रतीत होता है कि प्रार्थीया से जब भी टेलीफोन एक्सचेंज वाले काम करवाते थे तो उसे पानी भरने व सफाई करने के कार्य का अलग-अलग दर से ही भुगतान करते थे।

6- यहाँ इस तथ्य को भी दृष्टिगत रखा जाना उचित होगा कि प्रार्थीया के आवेदन पर अप्रार्थीगण द्वारा उल्लेखित वर्षों के दस्तावेज न्यायाधिकरण में प्रस्तुत किये गये हैं और साथ में हेमराज मीणा, सहा. महाप्रबन्धक का शपथ-पत्र भी प्रस्तुत किया गया है जिसमें यह कथन किया गया है कि मांगी गयी अवधि के उपलब्ध समस्त बिल वाउचर्स तलाश करके अधिकरण के समक्ष प्रस्तुत कर दिये गये हैं और इससे अधिक रिकॉर्ड विभाग के पास उपलब्ध नहीं है। जो दस्तावेज अप्रार्थीगण की ओर से प्रस्तुत किये गये हैं, उनके सम्बन्ध में प्रथम तो प्रार्थीया के प्रतिनिधि ने उक्त दस्तावेजात पर अप्रार्थी के गवाह राधेश्याम मीणा से जिरह नहीं की है और द्वितीय उक्त दस्तावेजों के अवलोकन से यह भी प्रकट हो रहा है कि प्रार्थीया द्वारा अप्रार्थीगण के यहाँ निरन्तर कार्य नहीं किया गया और जो भी कार्य किया गया है, वह मात्र ठेके, अर्थात् सेवा प्रदाता के रूप में ही रहा है जिनसे यही प्रकट होता है कि अप्रार्थीगण को जब कार्य की आवश्यकता होती थी तो वह प्रार्थीया से कार्य लेकर उसका भुगतान कर देते थे क्योंकि अप्रार्थी गवाह राधेश्याम मीणा ने जिरह में यह स्पष्टतः कथन किया है कि जो भी दस्तावेज न्यायालय की पत्रावली में पेश किये गये हैं वे सब इम्प्रेस्ट के बिल हैं तथा कर्मचारी को इम्प्रेस्ट से ही भुगतान किया जाता था जो ऑफिस मेंटेनेन्स की राशि से किया जाता था। यह भुगतान ऑफिस मेंटेनेन्स की राशि से किया जाता था प्रार्थीया की उपस्थिति के लिए कोई भी उपस्थिति रजिस्टर कार्यालय में नहीं रखा जाता था। इस गवाह ने यह कथन भी किया है कि शपथ पत्र जो भी लिखा हुआ है वह रिकॉर्ड के आधार पर है।

7- इस प्रकार उक्त विवेचन से यही प्रकट हो रहा है कि प्रार्थीया ने अप्रार्थीगण के यहाँ जो भी कार्य किया वह निरन्तर प्रकृति का ना होकर मात्र पानी भरने व सफाई करने का ही अंशकालीन रूप में रहा है तथा वो कार्य भी ठेका/सेवा प्रदाता के रूप में ही रहा है जिसका उसे समय-समय पर भुगतान किया जाता रहा है और वह यह साबित करने में पूर्णतया असफल रही है कि उसने सेवा समाप्ति तिथि अथवा हटने की तिथि दि. 01/03/2007 से ठीक पूर्व के अन्तिम कलैण्डर वर्ष, अर्थात् 12 कलैण्डर माह की अवधि में निरन्तर 240 दिन या उससे अधिक कार्य किया हो जबकि वांछित अनुतोष प्राप्त करने के लिए प्रार्थीया का ही यह प्रथम दायित्व था कि सेवा समाप्ति तिथि से ठीक पूर्व के कलैण्डर वर्ष में निरन्तर 240 दिवस कार्य करने का तथ्य साबित करती, किन्तु प्रार्थीया ने जो साक्ष्य प्रस्तुत की है, उससे उसके कथनों की किसी भी प्रकार से पुष्टि नहीं होती है और ऐसे में अप्रार्थीगण नियोजक द्वारा उसे सेवा से हटाये जाने से पूर्व अधिनियम के आज्ञापक किसी भी प्रावधान की पालना किया जाना आवश्यक नहीं रहा है। अप्रार्थी नियोजक की ओर से प्रार्थी द्वारा बतायी गयी तथाकथित नियोजनावधि में सेवा समाप्ति से ठीक पूर्व के 12 कलैण्डर माह में निरन्तर 240 दिन का कार्य किये जाने के तथ्य से इन्कार किया गया है और प्रार्थी श्रमिक की साक्ष्य से भी वह यह सिद्ध कर पाने में असफल रहा है कि उसने अप्रार्थी नियोजक के यहाँ सेवा समाप्ति तिथि से ठीक पूर्व के 12 कलैण्डर माह की अवधि में निरन्तर 240 दिन कार्य किया है। 240 दिवस कार्य करने के तथ्य को सिद्ध करने का भार कर्मकार पर है। कर्मकार पर 240 दिन लगातार काम करने के तथ्य को साबित करने का जो भार है, उसमें कर्मकार द्वारा केवल मात्र अपने शपथ-पत्र में यह लिख देना कि उसने 240 दिन तक लगातार काम किया, पर्याप्त नहीं होगा, अपितु उसे किसी ठोस मौखिक एवं प्रलेखीय/दस्तावेजी साक्ष्य से इस तथ्य को साबित करना होगा जिससे कि यह तथ्य समुष्ट हो सके, परन्तु हस्तगत प्रकरण में पत्रावली पर उपलब्ध समस्त मौखिक एवं दस्तावेजी साक्ष्य से प्रार्थी यह तथ्य साबित करने में पूर्णतया असफल रही है कि उसने सेवा समाप्ति दिनांक 01/03/2007 से ठीक पूर्व 12 कलैण्डर माह की अवधि में निरन्तर 240 या उससे अधिक कार्य किया है। माननीय सर्वोच्च न्यायालय द्वारा निम्नलिखित न्यायिक दृष्टांतों में इस संबंध में समय-समय पर यही सिद्धांत प्रतिपादित किया है—

RANIP NAGAR PALIKA VS BABUJU GABHAJI THAKORE- IX(2007) SLT 805

SC में माननीय सर्वोच्च न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया है कि LABOUR LAW- 240 days completion of service- Burden of proof lies on workman to show he worked continuously for 240 days for preceding one year - It is for workman to adduce evidence apart from examining himself to prove factum of being in employment of employer.

State of Gujrat vs Pratamsingh Narsinh Parmar, (2001) 9 SCC 713.

में माननीय सर्वोच्च न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया है कि In our opinion the Tribunal was not right in placing the onus of the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellatant. It was then for the claimant to lead evidence to show that he had in fact preceding his termination. Filling of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No Proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. on this ground alone, the award is liable to be set aside.

Rajasthan State Ganganagar Sugar Mills Ltd. Vs State of Rajasthan and Anr. v(2004)

LST 686=2004(8)SCC161ए (पैरा 6) में माननीय सर्वोच्च न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया है कि "It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellatant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for

240 days in a year. These aspects were highlighted in **Range Forest Officer vs S.T. Hadimani, 2002 (3) SCC 25**. No Proof of receipt of salary or wages for 240 days or order or record in that regard was produceci. Mere Non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

Manager Reserve Bank of India Baglore Vs S. Mani and Others 2005 (5) SCC page

100 में माननीय सर्वोच्च न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया है कि The Initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous.

R.M. Yellatti Vs the Asst. Executive Engineer (2006 (1) SCC 1006) 2005 AIR SCW

6103 में माननीय सर्वोच्च न्यायालय द्वारा यह सिद्धांत प्रतिपादित किया है कि "Analysing the above decisions of this court, it is clear that the provisions of the Evidence Act. in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgements we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgements further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgements lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

08—प्रार्थीया पक्ष की ओर से यह तर्क दिया गया है कि अप्रार्थी पक्ष द्वारा न्यायाधिकरण के समक्ष प्रार्थीया के कार्य से सुसंगत दस्तावेज जोकि अप्रार्थी के कब्जे में उत्तम साक्ष्य के रूप में उपलब्ध रहे हैं, प्रस्तुत नहीं किये गये हैं, अतः ऐसे में अप्रार्थी के विरुद्ध विपरीत उपधारणा ली जानी चाहिए और अपने उक्त तर्क के समर्थन में न्यायिक दृष्टांत आर.एम.येल्लटी बनाम असि. एक्जीक्यूटिव इंजीनियर—अपील (सिविल) संख्या 5124/2004—निर्णय दि. 07/11/2005, रामप्रसाद माली बनाम रीजनल ऑफिसर—2017(2) डबल्यूएलसी (राज.) 637 तथा गौरीशंकर बनाम स्टेट ऑफ राज.—एस.सी. सिविल अपील संख्या 3701/2015—निर्णय दि. 16 अप्रैल, 2015 का अवलम्ब लिया है, मैंने प्रस्तुत न्यायिक दृष्टांतों का ससम्मान अवलोकन कर मार्ग दर्शन प्राप्त किया, उनमें प्रतिपादित सिद्धांतों से मैं पूर्णरूपेण सहमत हूँ लेकिन हस्तगत प्रकरण के तथ्य व परिस्थितियों भिन्न होने से प्रार्थीया उनमें प्रतिपादित सिद्धांतों का लाभ प्राप्त करने का अधिकारिणी नहीं है हस्तगत प्रकरण में स्वयं अप्रार्थी पक्ष की ओर से हंसराज मीणा, सहायक महाप्रबन्धक का शपथ-पत्र प्रस्तुत हुआ है जिसमें उसका यही कथन रहा है कि प्रार्थीया पक्ष द्वारा सुसंगत अवधि के मांगे गये अधिकतम दस्तावेज बिल व वाउचर्स आदि पेश कर दिये गये हैं, इससे अधिक रिकॉर्ड विभाग के पास उपलब्ध नहीं है और प्रार्थीया द्वारा भी कोई ऐसी विश्वनीय साक्ष्य अपने कथनों के समर्थन में प्रस्तुत नहीं की है जिससे प्रथम दृष्टया उसके स्टेटमेंट ऑफ क्लेम में वर्णित तथ्यों की पुष्टि होती हो। ऐसी स्थिति में प्रार्थीया पक्ष की ओर से दिया गया तर्क माने जाने योग्य नहीं है।

09—निष्कर्षतः उपरोक्त विवेचन व विश्लेषण के आधार पर प्रार्थीया अपनी साक्ष्य से यह सिद्ध कर पाने में असफल रही है कि उसने अप्रार्थीगण नियोजक के यहाँ सेवा समाप्ति तिथि 01/03/2007 से ठीक पूर्व के एक कलैण्डर वर्ष, अर्थात् 12 कलैण्डर माह में निरन्तर 240 दिन कार्य किया है, बल्कि यह प्रकट हो रहा है कि प्रार्थीया ने अप्रार्थीगण के यहाँ जो भी कार्य किया वह निरन्तर प्रकृति का ना होकर मात्र पानी भरने व सफाई करने का ही अंशकालीन रूप में रहा है तथा वो कार्य भी ठेका/सेवा प्रदाता के रूप में ही रहा है जिसका उसे समय-समय पर भुगतान किया जाता रहा है। अतः प्रार्थीया श्रमिक अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से अप्रार्थी नियोजक से किसी प्रकार का कोई अनुतोष प्राप्त करने की अधिकारिणी नहीं है और यह निर्देश/रेफ्रेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामतः भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपनी प्रासांगिक आदेश दि. 23/05/2008 के जरिये सम्प्रेषित निर्देश/विवाद को इसी अनुरूप उत्तरित किया जाता है कि चूँकि प्रार्थीया श्रमिक मांगी बाई यह सिद्ध कर पाने में असफल रही है कि उसने अप्रार्थी नियोजक के यहाँ सेवा समाप्ति दिनांक 01/03/2007 से ठीक पूर्व के एक कलैण्डर वर्ष, अर्थात् 12 कलैण्डर माह में निरन्तर 240 दिन कार्य किया है, ऐसी स्थिति में प्रार्थीया, अप्रार्थी नियोजक से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारिणी नहीं है।

महेश पुनेठा, न्यायाधीश

अधिनिर्णय आज दिनांक 29/06/2022 को खुले न्यायाधिकरण में सुनाया जाकर हस्ताक्षरित किया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जावे।

नई दिल्ली, 28 दिसम्बर, 2023

का.आ. 1906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **अहमदाबाद** के पंचाट (60/2013) प्रकाशित करती है।

[सं. एल-37011/06/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 28th December, 2023

S.O. 1906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 60/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/06/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 21st August, 2023

Reference: (CGITA) No- 60/2013

1. The Chairman, Kandla Port Trust,

Administrative Office,

Post Box No.50,

Gandhidham (Kutch),

Gujarat Pin-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

21, Yogesh Building,

Plot No.586/12-C,

Gandhidham(Kutch) Pin-370201.

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/06/2012-IR(B-II) dated 08.03.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of management of Kandla Port Trust in not filling the vacant posts in base line for more than one year inspite of the vacancies are existing is justified? What relief the union is entitled for?”

1. The matter is fixed for 10.10.2023 for SP/workman's evidence. Shri K. V. Ghadia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, Advocate is representing Second Party/workman's union. Ld. Counsel for the SP/workmen has filed an application Ex.7 to take up the matter today on board and has drawn the attention of the Tribunal towards union's withdrawal pursis M-8/1 dtd. 17.08.2023 and withdrawal application Ex.8 praying to dispose the matter today itself. First Party/employer

has not opposed. In the interest of justice and to expedite the disposal, the expedite application Ex.7 is allowed. Let the matter be put up today for disposal.

2. Heard on withdrawal application Ex.8 r/w M-8/1. The union is permitted to withdraw its claim. The reference stands decided as withdrawn accordingly.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 28 दिसम्बर, 2023

का.आ. 1907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (131/2013) प्रकाशित करती है।

[सं. एल-37011/07/2013- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 28th December, 2023

S.O. 1907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.131/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/07/2013- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 21st August, 2023

Reference: (CGITA) No- 131/2013

2. The Secretary, Kandla Port Trust,

Administrative Office,

Post Box No.50,

Gandhidham(Kutch),

Gujarat-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

21, Yogesh Building,

Plot No.586/12-C,

Gandhidham(Kutch)-370201

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/07/2013–IR(B-II) dated 12.07.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Kandla Port Trust in not filling the posts of Accounts Officer, Accountant, Head Clerk, Labour inspectors by way of promotion as per recruitment rules in CHD Division under Traffic department is justified and whether the employees on these posts are eligible to the financial benefits from the date relevant posts have actually fallen vacant? What relief they are entitled to?”

3. The matter is fixed for 28.11.2023 for SP/workman’s evidence. Shri K. V. Gadhia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, Advocate is representing Second Party/workman’s union. Ld. Counsel for the SP/workman has filed an application Ex.7 to take up the matter today on board and has drawn the attention of the Tribunal towards union’s withdrawal pursis M-8/1 dtd. 17.08.2023 and withdrawal application Ex.8 praying to dispose the matter today itself. First Party/employer has not opposed. In the interest of justice and to expedite the disposal, the expedite application Ex.7 is allowed. Let the matter be put up today for disposal.

4. Heard on withdrawal application Ex.8 r/w M-8/1. The union is permitted to withdraw its claim. The reference stands decided as withdrawn accordingly.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 28 दिसम्बर, 2023

का.आ. 1908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (44/2013) प्रकाशित करती है।

[सं. एल-37011/26/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 28th December, 2023

S.O. 1908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 44/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/26/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 21st August, 2023

Reference: (CGITA) No- 44/2013

3. The Secretary, Kandla Port Trust,

Administrative Office,

Post Box No.50,

Gandhidham(Kutch),

Gujarat-370201.

.....First Party

V

The General Secretary,
Transport & Dock Workers Union,
21, Yogesh Building,
Plot No.586/12-C,
Gandhidham(Kutch) Pin-370201.

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/26/2012-IR(B-II) dated 05.03.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of KPT management in not regularising the services of Shri Makla Dayalal D/R Khalasi even though he has completed 240 days in many years since February, 1972 is justified? What relief the applicant is entitled to?”

1. The matter is fixed for 07.11.2023 for SP/workman's evidence. Shri K. V. Ghadia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, Advocate is representing Second Party/workman's union. Ld. Counsel for the SP/workman has filed an application Ex.7 to take up the matter today on board and has drawn the attention of the Tribunal towards union's withdrawal pursis M-8/1 dtd. 17.08.2023 and withdrawal application Ex.8 praying to dispose the matter today itself. First Party/employer has not opposed. In the interest of justice and to expedite the disposal, the expedite application Ex.7 is allowed. Let the matter be put up today for disposal.
2. Heard on withdrawal application Ex.8 r/w M-8/1. The union is permitted to withdraw its claim. The reference stands decided as withdrawn accordingly.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 28 दिसम्बर, 2023

का.आ. 1909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (64/2013) प्रकाशित करती है।

[सं. एल-37011/17/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 28th December, 2023

S.O. 1909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 64/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/17/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present....

Sunil Kumar Singh-I,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,

Dated 21th August, 2023

Reference: (CGITA) No- 64/2013

4. The Secretary, Kandla Port Trust,
Administrative Officer,
Post Box No.50,
Gandhidham(Kutch), Gujarat-370201.

Adipur(Kutch)

.....First Party

V

The General Secretary,
Transport & Dock Workers Union,
21, Yogesh Building,
Plot No.586/12-C,

Gandhidham(Kutch)-370201,

Adipur(Kutch).

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/17/2012-IR(B-II) dated 05.03.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of KPT management in not regularising the services of Sh. Hussain Abdulla, D/R Khalasi even though he has completed 240 days in many years since the year 1978 is justified? What relief the applicant is entitled to?”

1. The matter is fixed for 16.10.2023 for SP/workman's evidence. Shri K. V. Ghadia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, Advocate is representing Second Party/workman's union. Ld. Counsel for the SP/workman has filed an application Ex.7 to take up the matter today on board and has drawn the attention of the Tribunal towards union's withdrawal pursis M-8/1 dtd. 17.08.2023 and withdrawal application Ex.8 praying to dispose the matter today itself. First Party/employer has not opposed. In the interest of justice and to expedite the disposal, the expedite application Ex.7 is allowed. Let the matter be put up today for disposal.

2. Heard on withdrawal application Ex.8 r/w M-8/1. The union is permitted to withdraw its claim. The reference stands decided as withdrawn accordingly.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 29 दिसम्बर, 2023

का.आ. 1910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (56/2017) प्रकाशित करती है।

[सं. एल-37011/01/2017- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 29th December, 2023

S.O. 1910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/01/2017- IR(B-II)]

SALONI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 21th August, 2023**Reference: (CGITA) No- 56/2017**

1. The Chairman, Kandla Port Trust,

P.B.No.50,

Gandhidham(Kutch)-370201.

2. The Secretary, Kandla Port Trust,

P.B.No.50,

Gandhidham(Kutch)-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

21, Yogesh Building,

Plot No.586(583 with correction),

Gandhidham(Kutch)-370201,

Adipur(Kutch).

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/01/2017-IR(B-II) dated 19.06.2017 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of management of Kandla Port Trust, Gandhidham by not paying piece rate incentive to Cargo Handling Workers as per approved scheme and illegal reduction made by the management of Kandla Port Trust is legal and justified? If not to what relief the workmen are entitled for?”

1. Today matter is called out. Shri K. V. Ghadia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, Advocate is representing Second Party/workman's union The Second Party workman has filed withdrawal pursis vide Ex.-7 along with union's letter dated 17.08.2023 vide M-7/1, wherein it is prayed that the SP / workmen's union wants to withdraw the case. Withdrawal is not opposed by First Party. The Second party is permitted to withdraw the reference as prayed for.
2. Thus the reference stands disposed of as withdrawn.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 29 दिसम्बर, 2023

का.आ. 1911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (53/2013) प्रकाशित करती है।

[सं. एल-37011/11/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 29th December, 2023

S.O. 1911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 53/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/11/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 21th August, 2023

Reference: (CGITA) No- 53/2013

1. The Secretary, Kandla Port Trust,

Administrative Officer,

Post Box No.50,

Gandhidham(Kutch) Gujarat-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

21, Yogesh Building,

Plot No.586/12-C,

Gandhidham(Kutch)-370201

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/11/2012-IR(B-II) dated 27.02.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Kandla Port Trust in not regularising the service of Smt. Manjuben Kishan even though she has completed 240 days in many years since the year 1998 is legal & justified? What relief the applicant is entitled to?”

1. The matter is fixed for 21.11.2023 for arguments. Shri K. V. Ghadia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N.H. Rathod, Advocate is representing Second Party/workman's union. Ld. Counsel for the SP/workman has filed an application Ex.9 to take up the matter today on board and has drawn the attention of the Tribunal towards union's withdrawal pursis M-10/1 dtd. 17.08.2023 and withdrawal application Ex.10 praying to dispose the matter today itself. First

Party/employer has not opposed. In the interest of justice and to expedite the disposal, the expedite application Ex.9 is allowed. Let the matter be put up today for disposal.

2. Heard on withdrawal application Ex.10 r/w M-10/1. The union is permitted to withdraw its claim. The reference stands decided as withdrawn accordingly.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 29 दिसम्बर, 2023

का.आ. 1912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (59/2013) प्रकाशित करती है।

[सं. एल-37011/10/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 29th December, 2023

S.O. 1912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 59/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/10/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 21th August, 2023

Reference: (CGITA) No- 59/2013

The Secretary,

Kandla Port Trust, Administrative Office,

Post Box No.50, Gandhidham(Kutch),

Gujarat-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

21, Yogesh Building,

Plot No.586/12-C,

Gandhidham(Kutch)-370201.

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri N. H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/10/2012–IR(B-II) dated 08.03.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the KPT management in not granting the promotion to S/Shri Datta Ram, Auto-cum-Diesel Mechanic and Ramesh Khatri, Light House Mechanic to the post of Chargeman (Mechanical) w.e.f. their eligibility is justified? What relief these two workmen are entitled to?”

1. Today matter is called out. Shri K. V. Gadhia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, Advocate is representing Second Party/workmen's union. The Second Party workmen has filed withdrawal pursis vide Ex.-7 along with union's letter dated 17.08.2023 vide M-7/1, wherein it is prayed that the SP / workmen's union wants to withdraw the case. Withdrawal is not opposed by First Party. The Second party is permitted to withdraw the reference as prayed for.
2. Thus the reference stands disposed of as withdrawn.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 1 जनवरी, 2024

का.आ. 1913.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप. उच्चायुक्त, डेमोक्रेटिक सोशलिस्ट रिपब्लिक ऑफ़ श्रीलंका, दक्षिणी भारत, चेन्नई, के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती टी. सेंथिल कुमारी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक न्यायाधिकरण सह श्रम न्यायालय -चेन्नई पंचाट(संदर्भ संख्या 127/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.01.2024को प्राप्त हुआ था।

[सं. एल-42025/07/2024-01-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st January, 2024

S.O. 1913.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 127/2019) of the Central Government Industrial Tribunal cum Labour Court– Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation The Dy. High Commissioner, Democratic Socialist Republic of Shri Lanka ,Southern India, Chennai, and Smt. T. Senthil Kumari, Worker, which was received along with soft copy of the award by the Central Government on 01.01.2024.

[No. L-42025/07/2024-01-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT,

CHENNAI

ID No. 127/2019

Present: DIPTI MOHAPATRA, LL.M.

PRESIDING OFFICER

Date: 21.10.2022

Smt. T. Senthil Kumari

W/o A. Ramesh D. Velayutham

No. 30-B, EB Colony

Krishnapuram

Veppampattu-87

Thiruvallur District-602024 : 1st Party/Petitioner

AND

The Dy. High Commissioner for the Democratic
Socialist Republic of Sri Lanka in Southern India

No. 56, Sterling Road

Chennai-600034 : 2nd Party Respondent

Appearance:

For the First Party Petitioner : Advocate, Sri K.M. Ramesh

For the Second Party Respondent : None

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The brief facts of the Petitioner's case is that pursuant to the order dtd. 01.03.2008 of the Respondent, the Petitioner joined the Respondent in the post of Clerk/Typist on a fixed salary. After three months, the Applicant/Petitioner was terminated from service with effect from 04.07.2008 vide Respondent's Order dtd. 04.06.2008. She was again appointed to the post of Consular Assistant by Respondent's order dtd. 26.09.2008 on the same fixed salary. Thereafter, vide Order dtd. 17.09.2012, she was absorbed in the post to the cadre in Ministry of Foreign Affairs w.e.f 01.01.2013 for a period of three years. She was working continuously and provided with annual increment, etc. Her service was extended for further period of two spells vide the Respondent's letter dtd. 16.12.2016 and 19.12.2017. While she was still continuing in service, the Respondent issued a letter dtd. 21.12.2018 showing the completion of the job contract being enclosed with a cheque of the salary for the month of December, 2018. The Petitioner was working continuously without any break whatsoever. The Petitioner challenges the Order of Termination dtd. 21.12.2018 as illegal, unjustified. The specific relief sought for by the Petitioner is for a direction to the Respondent to reinstate the Petitioner with continuity of service, backwages and all other attendant benefits.

3. The Respondent did not enter appearance despite of due Notice and set ex-parte. In view of the case of the Applicant, the following issues are settled:

- (i) If the issuance of the communication of the Respondent order dtd. 21.12.2018 in favour of the Petitioner can be construed as a Termination Order.
- (ii) If such communication dtd. 21.12.2018 is illegal, unjustified and contrary to the principles of natural justice?
- (iii) To what relief the Applicant / Petitioner is entitled?

Issues (i) and (ii)

4. Since the issues (i) and (ii) are inter-linked inter-alia are taken up together for common discussion. The Petitioner adduced evidence in chief in support of the averments in the Claim Petition. Ten documents marked as Ext.W1 to Ext. W10 are relied on.

5. In support of the contentions of the 2A Application, the Petitioner adduces evidence that she joined the Respondent as Clerk-cum-Typist with a fixed salary of Rs. 10,150/- per month. This portion of her evidence is supported with the Appointment Order marked as Ext.W1. She was terminated w.e.f. 01.03.2008 vide Order dtd. 04.06.2008 (Ext.W2). Ext.W3 is the letter from the Respondent that she has been appointed as Consular Assistant vide letter dtd. 26.09.2008 in the same scale of pay.

6. The Petitioner produced Ext.W4, the communication made by the Deputy High Commissioner of the Respondent in favour of the Petitioner that the Ministry of External Affairs has decided to absorb her in the post to the cadre of Ministry of External Affairs in this Mission on locally recruited basis w.e.f. 01.01.2013 for a period of 3 years and her pay was fixed in the scale of Rs 5200-20,200 + Rs. 2,400/- Grade Pay and Allowances. It is further contended by the Petitioner that while she was continuing as such, her job was extended for a period of one year w.e.f. 01.01.2016 (Ext.W5). Similar extensions of her job for two more years was made by the Respondent vide Ext.W6 and Ext.W7. Ext.W8 is a Certificate of Experience issued by the then Deputy High Commissioner in favour of the Petitioner that she worked as Consular Assistant from 01.03.2008 to 31.12.2018. Ext.W9 is a Salary Cheque for the month of December, 2018.

7. While so, the Respondent without prior notice issued a letter dtd. 21.12.2018 directing the Petitioner to handover the official ID Card and records on the ground that the contract has reached its finality on 31.12.2018. A cheque for Rs. 40,014.50 was handed over towards her earned salary for the month of December, 2018.

8. On perusal of the documents under Ext.W1 and Ext.W2, it is understood that the Petitioner was initially appointed to the post of Clerk-cum-Typist vide Ext.W1 with a salary of Rs. 10,150/- per month. She was terminated vide Ext.W2 on 04.07.2008. The Sub-Clause 2 and 3 of Ext.W1 specifically denotes the terms and conditions of the job that the Petitioner's appointment was purely Temporary and such appointment no way confers any right to claim a permanent post in the Mission. Ext.W2 reveals that the Petitioner was terminated from her job since a new Officer was posted as against the vacancy where the Petitioner was temporarily posted. Similarly, Ext.W3 reveals that the Petitioner was appointed as Consular Assistant on Temporary Basis in the Deputy High Commission of Sri Lanka, Chennai w.e.f. 26.09.2008. The clauses with regard to the terms therein categorically states that her such appointment does not confer any right to claim a Permanent Post in the organization. Clause-5 reflects that appointment was liable to be terminated without notice. In Clause-6 the Petitioner was requested to acknowledge the receipt of the letter i.e. Ext.W3 and to state if she accepts the post as per Terms and Conditions. Ext.W4 reveals that the Ministry of External Affairs absorbs the Petitioner's Post to the cadre of MEA in the Mission on locally recruited basis w.e.f. 01.01.2013 for a period of 3 years. Clause-2 of the Appointment Letter (Ext.W4) says that the appointment of the Petitioner was temporary and non-pensionable. The Petitioner cannot claim any permanent employment under the Government of Sri Lanka or any Gratuity thereof. In the Clause-6 it was mentioned that the termination of such appointment will be subject to notice of one calendar month or one month salary in lieu of such notice. However, as per the Terms and Conditions of the temporary posting of the Petitioner for 3 years i.e. 01.01.2013 to 31.12.2015, the Petitioner's service was extended for one year w.e.f. 01.01.2016 vide Ext.W5. The Terms and Conditions as per Ext.W4 shall remain unchanged for the appointment of the Petitioner under Ext.W5. Thereafter, the service of the Petitioner was again extended for another one year w.e.f. 01.01.2018. The same conditions under Ext.W4 remained unchanged. Thereafter, the Petitioner was issued with the letter dtd. 21.12.2018 from Dy. High Commissioner wherein it was intimated to her that her contract of employment was to be completed on 31.12.2018. The admitted undisputed fact remains that on the same day, a cheque bearing No. 7580001693 for Rs. 40,014.50 was handed over to the Petitioner towards the salary for the month of December.

9. As such, on meticulous perusal of all the documents under Exhibits and in view of the discussion held in preceding paragraphs, it undoubtedly makes it clear that the Petitioner accepted the offer of job in full conscience of the terms and conditions of each of the Appointment Letter. Even during every extension of her appointment vide Ext.W5 and Ext.W6, it was abundantly made clear that the Terms and Conditions as per Ext.W4 shall remain unchanged. It also reveals that the Petitioner was fully aware of this fact and accepted the extensions. It was also made clear to her that the Petitioner at no point of time can claim permanency against her temporary posting. It was also made clear by the Respondent that she can be terminated from service with one month salary in lieu of prior notice. After completion of the contract period alongwith the extension period, she was noticed regarding completion of the contract period and issued with a cheque of one month pay. The Issues (i) and (ii) are answered.

Issue No. (iii)

10. The issuance of the letter vide Ext.W7 dtd. 21.12.2018 was in strict adherence to the Terms and Conditions of Ext.W4. Accordingly, Ext.W7 cannot be treated as a letter of termination as claimed by the Petitioner but a notice of completion of contract. Thus, the Respondent is found not to have defeated the principles of natural justice by issuance of Ext.W7. The Petitioner is not entitled to any relief as sought for. In the premises, the contentions of letter dtd. 21.12.2018 (Ext.W7) needs no interference. Accordingly, the 2A Application, being devoid of any merit is not maintainable.

The ID 127/2019 stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Smt. T. Senthilkumari
For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	01.03.2008	Xerox copy of appointment order for the post of

	Clerk/Typist issued to the Petitioner
Ext.W2 04.06.2008	Xerox copy of termination issued to the Petitioner
Ext.W3 26.09.2008	Xerox copy of Appointment Letter to Consular Assistant (Temporary) issued by the Respondent.
Ext.W4 17.09.2012	Xerox copy of letter for absorption of the post to the cadre of MEA of the Mission
Ext.W5 29.10.2015	Xerox copy of the Extension Letter
Ext.W6 19.12.2017	Xerox copy of the Extension Letter
Ext.W7 21.12.2018	Xerox copy of Certificate of Experience issued by the Respondent Office
Ext.W8 31.12.2018	Xerox copy of Certificate of Experience issued by the Respondent Office
Ext.W9 -	Xerox copy of Identity Card issued by the Respondent Office
Ext.W10 31.12.2018	Cheque bearing no. 198578 for Rs. 40,014.50

On the Management's side

Ex.No.	Date	Description
	<u>Nil</u>	

नई दिल्ली, 2 जनवरी, 2024

का.आ. 1914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचडीएफसी स्टैंडर्ड लाइफ इश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय I-दिल्ली के पंचाट (103/2018) प्रकाशित करती है।

[सं. एल-12012/40/2017- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 2nd January, 2024

S.O. 1914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 103/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court -I Delhi* as shown in the Annexure, in the industrial dispute between the management of HDFC Standard Life Insurance Company Ltd. and their workmen.

[No. L-12012/40/2017- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

Present: Justice Vikas Kunvar Srivastava (Retd.)

Presiding officer, CGIT, Delhi-1

ID No.103/2018

M/s Anjali Juneja,
R/o T-66, Vishnu Garden near Sunil Dairy (Khayala),
New Delhi-110018

Claimant...

Versus

HDFC Standard Life Insurance Company Ltd.
Through its MD & CEO, Lodha Excelus,
13th Floor, Apollo Mills Compound N.M. Joshi Marg,
Mahalaxmi, Mumbai-400011

Management...

None for the claimant

Shri Joy Dip Bhattacharya, AR for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-12012/40/2017-IR(B-I) dated 24.01.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

“Whether the action of the management HDFC Standard Life Insurance Company Ltd. in terminating the services of M/s Anjali Juneja vide order dated 02.11.2015 is illegal and or justifiably? If not, to what relief the workman is entitled to and what directions are necessary in this respect?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Claim statement with documents filed on December 05, 2018 and on the next date written statement on behalf of the management filed.

3. After received the written statement the case list for filing of rejoinder for May 08, 2019, the claimant not appear nor his AR present. On 13.08.2019, 08.11.2019, 15.12. 2021, 09.03.2022, 30.05.2022, 21.11.2022, 15.02.2023 and 17.03.2023, the claimant not present nor his AR. Despite directions so given, claimant opted not to file the rejoinder. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 11.04.2023

नई दिल्ली, 3 जनवरी, 2024

का.आ. 1915.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 03/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/12/2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023-आईआर(सी एम-II)]

सलोनी, उप निदेशक

New Delhi, the 3rd January, 2024

S.O. 1915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2016) of the Central Government Industrial Tribunal-cum-

Labour Court, Godavarikhani as shown in the Annexure, in the industrial dispute between the Management of S.C.C.L. and their workmen, received by the Central Government on 22/12/2023.

[No. L-22013/01/2023 – IR (CM-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-ADDITIONAL DISTRICT AND SESSIONS COURT, GODAVARIKHANI.

PRESENT:- SRI Dr. T. SRINIVASA RAO,

CHAIRMAN-CUM-PRESIDING OFFICER.

TUESDAY, ON THIS THE 30th DAY OF OCTOBER, 2023.

I.D. No. 03 of 2016

Between:-

Ballepu Rajam (E.C.No.2853166), S/o. Abbaiah, Age:50 Years; Occ: Ex-Coal Filler, C/o. Sri G.Komuraiah, Advocate, R/o. H. No.1-97, Padmanagar, Karimnagar - 505001.

... Petitioner/Workman.

AND

1. The General Manager, S.C.C. Ltd, SRP Area, Srirampur of Adilabad District.
2. The Managing Director (Adm), S.C.C.Ltd, Kothagudem of Khammam District.

...Respondents/Management.

This case coming before me for final hearing in the presence of Sri G. Komuraiah, Advocate for the Petitioner/Workman and of Sri T. Ravinder Singh, Advocate for the Respondents/Management; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec.2-A (2) of I.D. Act praying to set aside the dismissal order, dt.27.12.2004 passed by the Respondent No.1 and to direct the Respondents' Company to reinstate the petitioner/workman into service with continuity of service, all other consequential attendant benefits and full back wages.

2. The brief averments of the petition are as follows:

2(a). That the Petitioner/Workman i.e., Ballepu Rajam was appointed as Coal Filler in the year, 1989 and attached to work at Chennur I & I-A Incline under the control of the Colliery Manager, S.C.C. Ltd, SRP Area, Srirampur of Adilabad District. The petitioner maintained good attendance from 1989 to 2002 without any remark from his superiors. But in the year 2003, his miseries rounded him at once as his father expired suddenly and this incident took some time to recover from the shock. Though he was in grief he applied leave from 01.01.2003 to 20.01.2003, which shows his care and respect for duty. After the death of his father the petitioner's brothers raised dispute for partition of ancestral property i.e., House and Agriculture land, this dispute prolonged for long time and the petitioner's presence was imminent before the panchayath. Due to this problem, the petitioner has to spend most of his time at his native place. This lead to dragging the petitioner and his family members on to the road and shifting his family to his native place from Chennur. As the disputes are yet to be concluded, the petitioner's eldest daughter marriage was fixed, for meeting the marriage expenses he was compelled borrow money from others.

2(b). Further, it is to submit that the petitioner performed his daughter's marriage by facing much difficulty; and under these unavoidable circumstances, the petitioner was remained to absent duties by informing his authorities verbally. Further, on 29.11.2003 when the petitioner was in duty he met with an accident in the mine and his left leg was injured badly. The respondent No.1 without enquiring into the facts issued charge sheet on 26.03.2004 by framing the charges under company's standing orders 25:25 habitual absence from duty without sufficient cause and 25:31 absence from duty without sanctioned leave. It is pertinent to mention that the management shown month wise absences of the petitioner in the charge sheet. Against the month of January, 2003 number of absents shown as (31) days but whereas the petitioner applied medical leave from 01.01.2003 to 20.01.2003. Further, in the month of December, 2003, from 22.12.2003 to 31.12.2003 was indicated as absent. But the petitioner was sanctioned medical leave from 22.12.2003 to 07.02.2004. This shows the negligent attitude of the management towards the petitioner/workman.

2(c). It is to submit that the petitioner submitted his reply to the charge sheet by explaining the above reasons but the management was not satisfied with his explanation and enquiry notice was served on him. The petitioner attended the

enquiry and again explained the facts for his reasons of absence during the year, 2003. The enquiry was conducted in partisan manner without considering the facts stated by the petitioner, which is against the principles of natural justice. But the management could not consider his request and dismissed his services w.e.f., 01.01.2005 vide Proc. No. SRP/PER/13.008/7051, dt.27.12.2004. The Company adopted unfair labor practice and vindictive attitude towards the petitioner and terminated him from service by adopting victimization. After a lapse of (07) years from his termination, the petitioner was called for interview on 26.04.2012 at Corporate Office at Kothagudem under the scheme for reviewing the cases of ex-employees dismissed on the ground of absenteeism for their re-appointment. Accordingly the petitioner attended the interview with fond hope to get the job. Though (03) years elapsed, But the result of which is still awaited. That the quantum of punishment imposed on the petitioner was shockingly is proportionate and harsh to the gravity of misconduct of the petitioner.

2(d). It is to submit that the petitioner/workman has still (08) year's service left and he served a demand notice dt.29.10.2015 on the respondent No.1 to reconsider his termination order and for reinstatement into service with continuity of service and all attendant benefits with back wages. The respondent No.1 having acknowledged the notice and kept silent on the notice till to-date despite laps of (15) days stipulated time. This Court was vested with wide powers U/Sec.11-A of the I.D. Act, 1947 to quash the termination order and disproportionate punishment and grant every relief to the poor workman. Therefore, he prayed to set aside the dismissal order dt.27.12.2004 and pass the orders for his reinstatement into service with continuity of service, all other consequential attendant benefits and full back wages.

3. On the other side, the Respondents/Management submitted their counter by admitting the employment of the Petitioner/ Workman inter-alia contended that the Respondent No.1 denies all the material averments of the Petition, except those which are specifically admitted herein. At the outset it is to submit that the present dispute is barred by limitation in accordance to Section 2A of the Industrial Disputes Amendment Act, 2010 (from 15.09.2010), which is extracted hereunder:-

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in Sub-Section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in respect of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it was a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in as relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in Sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of (03) three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-section (1)."

3(a). It is to submit that admittedly the petitioner was dismissed from the services of the respondent No.1 Company with effect from 01.01.2005. The petitioner having kept quiet for all these years, now after laps of a (11) years, raised the dispute of dismissal, which is barred by limitation U/Sec.2A (3) of the Industrial Disputes Amendment Act, 2010. Therefore, for the said reason the proceedings are liable to be dismissed in limine. It is to further submit that the limitation of the proceedings may be decided as a preliminary issue before going in to enquiry proceedings.

3(b). Without prejudice to its rights in respect of the preliminary objection raised above, it is to submit that the petitioner was appointed into the services of the RespondentNo.1 Company as Badli Filler on 10.01.1989 and the petitioner was never regular in attending his duties. The services of the employees of the Respondent No.1 Company are entirely governed by the approved company's standing orders. According to Section 52(2) of the Mines Act-1952, an underground employee is required to put in minimum musters of (190) and surface employees (240) musters. The petitioner being an underground employee, he is expected to put in minimum of (190) musters in a calendar year, but he being a chronic absentee had put in only (83) musters in the year, 2003. The petitioner is a chronic absentee and the following attendance particulars indicate that the petitioner was not regular to his duties.

Sl.No.	Year	No. of Musters
01	1999	209
02	2000	175
03	2001	174

04	2002	142
05	2003	83

3(c). During the period from January 2003 to December 2003, the petitioner had put in only (83) musters. As the above act amounts to misconduct under clause No.25.25 and 25.31 of company's approved standing orders, he was charge sheeted vide charge sheet dt.26.03.2004, and the relevant standing order reads as under:-

"Clause 25.25: Habitual late attendance or habitual absents from duty without sufficient cause" "Clause

25.31: Absents from duty without sanction leave or sufficient cause or overstaying beyond sanctioned leave."

3(d). It is to submit that the as per the service rules of the Company the workman has to work for at least one day in a new year to get eligibility for availing new leaves. The petitioner applied leave from 01.01.2003 to 20.01.2003 without working for a single day in the New Year. Hence, he was not entitled for availing leave. Further, it is to submit that he had met with a minor accident in the mine on 29.11.2003 and he was treated as an out-patient in the Company Hospital. The petitioner was a chronic absentee and he had put in less than (100) actual musters during the year, 2003. Hence, he was issued with a Charge Sheet dt.26.03.2004 under clause No.25.25 and 25.31 of approved company's standing orders. Since, the petitioner brought an out-station medical certificate for the period from 22.12.2003 to 07.02.2004, as per company rules he was directed to company Hospital to find out his fitness and for allowing him to duty, but, it was not treated as sanctioned leave on loss of pay. The enquiry into the above charge sheet was conducted in a free and fair manner giving full opportunity to the petitioner to participate and to defend his case.

3(e). It is to submit that during the enquiry, the charges leveled against the petitioner were proved and show-cause notice was also issued to the petitioner enclosing thereto the enquiry proceedings and enquiry report. But, the petitioner did not submit any representation to the said show-cause notice. As such, he was dismissed from company's service w.e.f., 01.01.2005 vide Proc. No. SRP/PER/13-008/7051, dt.27.12.2004. The averment made by the petitioner that the Company adopted unfair labor practice and vindictive attitude towards the petitioner and terminated him from service by adopting victimization is not true and correct; and hence, denied.

3(f). It is to submit that in accordance with the memorandum of settlement dt.09.08.2011 and circular dt.02.09.2011, a High Power Committee was constituted to review the dismissal cases on account of absenteeism during the period from 01.01.2002 to 31.01.2010. The criteria for reappointment as a fresh Badli Filler is as follows:

- i). *The dismissed employee should have put in (100) musters in any (02) years out of previous (05) years prior to dismissal.*
- ii). *The dismissed employee should be below (42) years as on 09.08.2011.*

3(g). In the instant case the petitioner was dismissed with effect from 01.01.2005 but was not considered for reappointment as the age of the petitioner was (47) years and (08) months as on 09.08.2011 as his date of birth is 17.11.1963 as per records. As such, the petitioner's case was not considered by the High Power Committee. Further, the averment made by the petitioner at para-6 of the petition that the quantum of punishment was shockingly disproportionate and harsh against the gravity of misconduct is not true and correct and hence, denied. The other allegations which are not specifically admitted herein are hereby denied. Therefore, the respondents prayed to dismiss the petition filed by the petitioner with costs.

4. In support of the claim of the Petitioner/Workman, he got marked Ex.W-1 to Ex.W-7 and on the other side for the Respondents/Management Ex.M-1 to Ex.M-2 were marked.

5. Heard, the learned counsel for Petitioner/Workman as well as learned counsel for the Respondents/Management, besides written arguments.

6. **Now the points for consideration are:**

1. ***Whether the domestic enquiry conducted by the respondents is valid or not?***
2. ***Whether the charges leveled against the petitioner are proved beyond any reasonable doubt or not?***
3. ***Whether the dismissal order, dt.27.12.2004 is liable to be set aside, if so, whether the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?***

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents'-Corporation, these are the admitted facts that the Petitioner and he worked as Coal Filler in the Respondents'-Company. Ex.M-1 is Name removal letter. Ex.M-2 is dismissed order. Further, the petitioner got marked Ex.W-1 to Ex.W-7, on his behalf; wherein, Ex.W-1 is

dismissal order issued by the project Officer, IK & CH Mines. Ex.W-2 is copy of demand notice along with postal receipt. Ex.W-3 is No.IK.1/R/IR/007/2003/1271 memo calling explanation for being absented to duty. Ex.W-4 is charge sheet No.IK.1/R/IR/ 008/2003/1909 calling explanation for being absented to duty. Ex.W-5 is charge sheet No.CH.1/2003/R/08/1973 calling explanation for being absented to duty. Ex.W-6 is enquiry notice No.CH.1/2003/R.10/650 to attend before enquiry officer on the charges laid vide CS.No.CH.1/2004/R.10/1354, dt.05.07.2004. Ex.W-7 is charge sheet No.IK.1/R/IR/008/2004/1616 calling explanation for being absent to duty.

8. Here, the learned counsel for the respondents has strenuously argued that the petitioner was appointed into the services of the Respondent No.1 Company as Badli Filler on 10.01.1989 and the petitioner was never regular in attending his duties. The petitioner being an underground employee, he is expected to put in minimum of (190) musters in a calendar year, but he being a chronic absentee had put in only (83) musters in the year, 2003. As the above act amounts to misconduct under clause No.25.25 and 25.31 of company's approved standing orders, he was charge sheeted vide charge sheet dt.26.03.2004. Further as per the service rules of the Company, a workman has to work for at least one day in a new year to get eligibility for availing new leaves. The petitioner applied leave from 01.01.2003 to 20.01.2003 without working for a single day in the New Year. Hence, he was not entitled for availing leave. Since, the petitioner brought an out-station medical certificate for the period from 22.12.2003 to 07.02.2004, as per company rules he was directed to company Hospital to find out his fitness and for allowing him to duty, but, it was not treated as sanctioned leave on loss of pay. The enquiry into the above charge sheet was conducted in a free and fair manner giving full opportunity to the petitioner to participate and to defend his case.

8(a). The learned counsel for the respondents further argued that during the enquiry all the charges were proved against the petitioner and show-cause notice was also issued to him by enclosing copies of enquiry proceedings and enquiry report. But, the petitioner did not submit any representation to the said show-cause notice. As such, he was dismissed from company's service w.e.f., 01.01.2005 vide Proc. No. SRP/PER/13-008/7051, dt.27.12.2004. Further, in accordance with the memorandum of settlement dt.09.08.2011 and circular dt.02.09.2011, a High Power Committee was constituted to review the dismissal cases on account of absenteeism during the period from 01.01.2002 to 31.01.2010. But as the petitioner was (47) years and (08) months as on cut-off date of 09.08.2011, he was not considered by the High Power Committee. The punishment of dismissal from service imposed by the respondents is quite proportionate, proper and justified. Hence, he prays to dismiss the petition, without granting any relief to the petitioner.

9. Per contra, the learned counsel for the Petitioner/Workman vehemently argued that the petitioner was appointed as Coal Filler in the year 1989 and he maintained good attendance from 1989 to 2002 without any remark from his superiors. But in the year 2003, his miseries rounded him at once as his father expired suddenly and this incident took some time to recover from the shock. After the death of his father, the petitioner's brothers raised dispute for partition of ancestral property and this dispute prolonged for long time before the panchayath. Due to this problem, the petitioner has to spend most of his time at his native place. Further, the petitioner's eldest daughter marriage was fixed and for meeting the marriage expenses he was compelled borrow money from others. He performed his daughter's marriage by facing much difficulty and the petitioner was remained to absent duties by informing his authorities verbally. On 29.11.2003, when the petitioner was in duty he met with an accident in the mine and his left leg was injured badly. But, respondent No.1 without enquiring into the facts issued charge sheet on 26.03.2004 by framing the charges under company's standing orders 25:25 habitual absence from duty without sufficient cause and 25:31 absence from duty without sanctioned leave. The petitioner submitted his reply to the charge sheet by explaining the above reasons but the management was not satisfied with his explanation and enquiry notice was served on him. The petitioner attended the enquiry and again explained the reasons of absence during the year, 2003. But the respondents not considered his request and dismissed him from service w.e.f., 01.01.2005 vide Proc. No. SRP/PER/13.008/7051, dt.27.12.2004.

9(a). The learned counsel for the petitioner/workman further argued that after a lapse of (07) years, the petitioner was called for interview on 26.04.2012 at Corporate Office at Kothagudem under the scheme for reviewing his case for re-appointment. The petitioner attended the interview with fond hope to get the job. Though (03) years elapsed, the result of which was still awaited. Hence, the extremely harsh punishment of dismissal from service is shockingly disproportionate and not commensurate. The petitioner hails from a very poor family and has no other source of livelihood to feed his family members and this Court has got wide powers U/Sec.11-A of I.D. Act to set-aside dismissal order and to grant reinstatement into service with full back wages.

POINT No.1:

10. In this matter, this Tribunal framed issues on 25.06.2018 and on 22.02.2021 this Tribunal passed an order holding that the domestic enquiry is fair and valid. Now the next question is whether the misconduct is proved in the facts of the case and the findings are not perverse. So, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not based on evidence.

POINT No. 2 & 3:

11. In view of the above pleadings of the Petitioner/Workman and Respondents/company and rival arguments of their respective counsel, now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by the respondents with effect from 01.01.2004. Further, he himself got examined as WW-1 and also got marked Ex.W-1 to Ex.W-7. A perusal of chief examination of WW.1, it shows that the same is nothing but replica of the petition contents. However, during cross examination of WW.1, he stated that he was absent due to his ill-health and also stated that he did not file any record to show that he was suffering from ill-health. Whereas, on behalf of the respondents, the Senior Personnel Officer of respondent company was examined as MW.1, during his cross examination, he stated that if the workman were aged about 42 years as on 09.08.2011, he would have been considered, but the petitioner was aged about 47 years and as such, he was not considered. Therefore, it is clear from the above evidences of both sides that the petitioner has not attended the duties only due to his ill-health, but to prove the same the petitioner has not filed any single medical document. Further, there is no dispute by either side that a High Power Committee was constituted to review the dismissal cases on account of absenteeism cases during the period from 01.01.2002 to 31.01.2010 with a criteria for re-appointment as a fresh Badli Filler with the conditions that the dismissed employee should have put in 100 musters in any 2 years out of previous 5 years prior to dismissal and the dismissed employee should be below 42 years as on 09.08.2011. But as per the evidence of MW.1, the petitioner is having 47 years during the above said date and during the year 2003, the respondents contended that he put in only 83 musters, hence, his case was not considered by the High Power Committee. However, a perusal of the record, it is clear that the petitioner was dismissed with effect from 01.01.2005 but was not considered and for re-appointment as the age of the petitioner was 47 years and 8 months as on 09.08.2011 as his date of birth is 17.11.1963 as per records. Further, since the domestic enquiry conducted by the respondents is held valid and also the petitioner failed to prove that due to ill-health only, he did not able to attend the duties, the charge leveled against the petitioner is proved basing on the record.

11. Further, another contention raised by the respondents/ company is that after lapse of (9) years from the date of punishment without proper causes for delay in terms of Limitation Act, this I.D., was filed, hence it is not maintainable. On the other side, the contention of the petitioner/workman is that he was appointed as Badli Filler in the year 1989, and rendered the services of (24) years and he hails from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case under section 11-A of I.D., Act.

12. Here, the learned counsel for the petitioner/workman has relied on a Division Bench Judgment of the Hon'ble Supreme Court in Civil Appeal No.2157/1999, dt.08.04.1999 between Ajaib singh vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd., & another, wherein their lordships held that:-

"Article 137 of schedule of Limitation Act not applicable to the proceedings under I.D. Act. The object of Industrial Disputes Act was to give succor to weaker sections of the society. The emergence of the concept of Welfare State implies an end to exploitation of workman and as a corollary to that collective bargaining came into it own. The Legislature had intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of Industrial Disputes in a peaceful manner.

The object of the Act, therefore, is to give succor to weaker sections of the society which is a pre-requisite for Welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life-blood of a developing society. The Act provides a machinery for investigation and settlement of industrial dispute ignoring the legal technicalities with a view to avoid delays, by specially authorized Courts which are not supposed to deny the relief on account of the procedural wrangles".

13. So there is no force in the contention of the learned counsel for Respondents/company with regard to delay in view of the above cited decision. Therefore, in view of the above decision and the facts and circumstances of the case, if we come to quantum of sentence it is settled law that the discretion of which can be exercised under section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. Therefore, in the present case on hand, it is evident from the record that the petitioner/workman has put up 24 years of service in the company. Even, the petitioner failed to prove his case and the charge leveled against the petitioner is proved, this Tribunal is of the opinion that there are mitigating circumstances that since the petitioner rendered long service of (24) years, the punishment imposed by the respondents/ company against the petitioner /workman is harsh, disproportionate and shocks to conscience of this Tribunal, hence, deserves to be modified since the disciplinary authority cannot be permitted to act arbitrarily and work like a Roman Knight and it cannot be allowed a fight between David and Goliath as in the present case on hand. Moreover, the facts of this case attracts the proverbial saying "Every saint has a past and every sinner has a future".

14. Therefore, in view of the above facts and circumstances and keeping in view of the principle "temper justice with mercy" and to meet the ends of justice, this Tribunal is of the opinion that the punishment imposed on the

Petitioner/Workman vide the Proceedings, dt.27.12.2004 under Ex.M-2 is disproportionate and shock to the conscience of this Tribunal and there is no much gravity in the misconduct, hence, it deserves to be modified appropriately. Here, this Tribunal relied upon a decision of Hon'ble Gujarat High Court Bhavnagar District Panchayat vs Dhanabhai Mohanbhai, dt.06.08.2021, wherein their lordship held that:

12. Now, in this case, as submitted by learned advocate for the workmen that almost all workmen have retired and almost 30 years have passed, there is no question of now reinstating all the workmen. It also appears from record that in all these petitions, by virtue of order dated 6.4.2010, the petitioner herein has complied with the provisions of Section 17-B of the Industrial Disputes Act. Considering the factual aspects of the present case, since there was a short tenure of service of the workmen instead of granting continuity of service and back wages, it will be appropriate to award compensation as full and final settlement in favour of the workmen. Now, considering the peculiar facts of this case and the fact that there was short span of service of the respondents, this Court is of the considered opinion, if Rs.50,000/- is awarded as C/SCA/1631/2010 JUDGMENT DATED: 06/08/2021 compensation as full and final settlement, it will serve the ends of justice.

13. Considering the judgment of the Apex Court in the case of Tapash Paul Vs. BSNL and another reported in 2016 (1) Scale 92 and BSNL Vs. Bhurumal reported in 2014 (7) SCC 177, this Court is of the view that in the present cases granting of relief of reinstatement after such a long gap will not serve any purpose and, therefore, this Court is of the view that if the order to grant compensation of Rs.50,000/- to each respondent-workman in lieu of reinstatement is passed, it will meet the ends of justice.

14. In view of above, all these petitions are partly allowed and the impugned common award dated 16.10.2009 passed by the Labour Court, Bhavnagar in Reference (LCB) Nos.99, 101, 114, 115, 116, 117 and 118 of 1992 is modified to the aforesaid extent that the petitioner herein shall pay Rs.50,000/- as full and final compensation to each of the workman. Such amount be paid to each workman by the petitioner, after proper verification of the identity by an account payee cheque/ pay order within a period of three months from the date of receipt of this order, failing which the concerned workman shall be entitled to get interest at the rate of 6% from the date of this order till the date of actual realization. It is observed that the aforesaid amount is in addition to whatsoever amount paid to him/her till today. Rule is made absolute accordingly with no order as to costs. Registry is directed to maintain a copy of this order in all connected matters.

15. Therefore, in view of the above decision and in view of the above facts and circumstances of the case since the date of birth of the petitioner is 17.11.1963 and the superannuation of the petitioner is 17.11.2023, this Tribunal is of the considered opinion that granting lumpsum compensation of Rs.1,00,000/- to the petitioner-workman in lieu of reinstatement will meet the ends of justice since the charges leveled against the petitioner are proved and the petitioner/workman already attained the age of superannuation.

16. In the result, this petition is partly allowed. The Respondent/ Management is directed to pay lumpsum compensation of Rs.1,00,000/- to the petitioner/workman. Consequently, the petitioner/workman is not entitled to any continuity of service, back wages and any other attendant benefits. The Award shall come into force on expiry of (30) days from the date of its publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 30th day of October, 2023.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-

-Nil-

FOR MANAGEMENT:-

-Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	27.12.2004	Dismissal order issued by the project Officer, IK & CH Mines.
Ex.W-2	Dt.	29.10.2015	copy of demand notice along with postal receipt.
Ex.W-3	Dt.	05.06.2003	No.IK.1/R/IR/007/2003/1271 memo calling explanation for being absented to duty.
Ex.W-4	Dt.	16/18.08.2003	Charge sheet No.IK.1/R/IR/008/ 2003/1909 calling explanation for being absented to duty.

Ex.W-5	Dt.	04.10.2004	Charge sheet No.CH.1/2003 /R/08 /1973 calling explanation for being absented to duty.
Ex.W-6	Dt.	12.08.2004	Enquiry notice No.CH.1/2003/R.10/ 650 to attend before enquiry officer on the charges laid vide S.No.CH.1/ 2004/R.10/1354, dt.05.07.2004.
Ex.W-7	Dt.	26.03.2004	Charge sheet No.IK.1/R/IR/008/ 2004/1616 calling explanation for being absent to duty.

FOR MANAGEMENT:-

Ex.M-1	Dt.	02.02.2005	Name removal letter
Ex.M-2	Dt.	27.12.2004	Dismissed order

नई दिल्ली, 3 जनवरी, 2024

का.आ. 1916.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 46/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/12/2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023-आईआर(सीएम-II)]

सलोनी, उप निदेशक

New Delhi, the 3rd January, 2024

S.O. 1916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2018) of the Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure, in the industrial dispute between the Management of S.C.C.L. and their workmen, received by the Central Government on 22/12/2023.

[No. L-22013/01/2023 – IR (CM-II)]

SALONI, Dy. Director

ANNEXURE**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI.****PRESENT:- SRI Dr.T.SRINIVASA RAO,****CHAIRMAN-CUM-PRESIDING OFFICER.****FRIDAY, ON THIS THE 20th DAY OF OCTOBER, 2023****I.D.No. 46 of 2018**

Between:-

Uppula Nagaraju, E.C.No.2378670, Ex-Badli Filler (UG), S/o. Rajaiah, Age:26 Years, C/o. Sri B. Amarendar Rao, Advocate, Raghupathi Rao Nagar, Ganganagar, Behind Bharat Petrol Bunk, Godavarikhani, Mandal Ramagundam District: Peddapalli (T.S) - 505 209.

...Petitioner.

A N D

1. The Supdt. of Mines Singareni Collieries Company Ltd., RK-1A Incline, Mandamarri Area, P.O: Mandamarri, District: Mancheril, (T.S).
2. The Chief General Manager, Singareni Collieries Company Ltd., Mandamarri Area, P.O: Mandamarri, District: Mancheril, (T.S).
3. The Chairman & Managing Director, Singareni Collieries Company Ltd., P.O: Kothagudem, District: Khammam (T.S).

...Respondents.

This case coming before me for final hearing in the presence of Sri B. Amarendar Rao, Advocate for the Petitioner and of Sri T. Ravinder Singh and Sri K. Sudhakar Reddy, Counsel for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This is a petition filed U/Sec.2-A (2) of Industrial Disputes Act-1947 by Sri Uppula Nagaraju/Petitioner, E.C.No.2378670, Ex-Badli Filler (UG) praying to set aside the dismissal order Ref.No. MMR/PER/D/072/17/6079, dt.26.10.2017 passed by Respondent No.2 and to direct the respondents'-company to reinstate the him into service with continuity of service, all other consequential attendant benefits and full back wages.

2. The brief averments of the petition are as follows:-

2(a). It is to submit that the Petitioner/Workman was appointed in the Respondents'-Company during the year 2012 as Badli Filler in place of his deceased father Uppula Rajaiah, Ex.Coal Filler, EC.No.2335760 of KTK-2 Incline, who died while in service during in the year 2006. The petitioner's name was kept on live roaster and after attaining (18) years of age, he was provided dependant employment in place of late father, vide Office Order dt.21.10.2011. After completing basic job training at MVTC, he was posted to work as Badli Filler (Under Ground), vide Officer Order dt.21.05.2012, in the absentee vacancies of regular Coal Fillers.

2(b). It is to submit that the petitioner is the only son, his father expired while in service and there is nobody to look after his ailing mother. As his father worked in Bhupalpalli Area, the petitioner and his mother were residing at Bhupalpalli. But, due to his posting to RK.1A Incline in Mandamarri Area, the petitioner was compelled to stay at Mandamarri. But, the underground atmosphere and water did not suit him and his health condition was badly deteriorated. Further, he sustained injuries while on duty in the underground due to felling of big Coal Stone on him. He was given treatment in the Area Hospital Mandamarri, by keeping him ICU during the year 2014. On that incident, the petitioner's mother suffered apprehension, fear and "Phobia". Further, the petitioner suffered from chronic ill-health and he had to look after his ailing mother and as such, he could not attend to his duties during the year 2015. But, the respondent No.1 issued charge sheet dt.27.07.2016 alleging the following charge:-

"25.31: Absence from duty without sanctioned leave or sufficient cause or over staying beyond sanctioned leave".

2(c). It is to submit that purely due to ill-health of the petitioner and chronic ill-health of his ailing mother, the petitioner was unable to perform duty regularly during the charge sheet period and submitted Medical Certificates. Due to acute ill-health, the petitioner became very weak but he was subjected to victimization and counseling period of (03) months was not afforded to improve his attendance. Further, the petitioner was given duty from 21.05.2012 but his attendance during the year 2010 and 2011 was shown as "NIL" in the Charge Sheet which is false and highly misconceived. There is reasonable and sufficient cause for the alleged absence of the petitioner during the charge sheet period and it cannot be termed as misconduct. But, the respondent No.2 dismissed him from his service vide Proc. dt.26.10.2017 with effect from 09.11.2017, which is highly arbitrary and against the basic principles of natural justice.

2(d). Further, the capital punishment of dismissal from service was imposed by the respondent No.2, without issuing any prior show cause notice proposing the said punishment of dismissal from service. It is against the settled Law and contrary to the principles of natural Justice. The extreme punishment of dismissal from service is highly excessive and shockingly disproportionate. It amounts to the economic death of the petitioner, which is not warranted and deserves to be set aside by this Court. The petitioner is out of employment and could not secure any other alternative job inspite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prays to set aside the dismissal order dt.26.10.2017 passed by the respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all other consequential attendant benefits and full back wages.

3. On the other side the Respondents/Management filed counter by admitting the employment of the Petitioner/Workman with the Respondents'-Company, however, inter-alia contended that the petitioner was appointed in to the services of the Respondents'-Company as Badli Filler during the year 2012 at KTK 2-Incline. It is false to allege that the respondents'-company utilized the services of the petitioner in the absentee vacancy of regular coal fillers. It is true the respondent No.2 dismissed the petitioner from his service due to his chronic absenteeism in attending his duties even after giving several opportunities to improve his attendance wherein the Petitioner failed to improve attendance as such, he was dismissed from the services of the Respondents'-Company.

3(a). The averments that the petitioner is the only son, his father expired while in service and there was nobody to look after his ailing mother and as his father worked at Bhupalpally area, the petitioner and his mother residing at Bhupalpally and due his posting to R.K-1A Incline in Mandamarri Area, he was compelled to stay at Mandamarri and the underground atmosphere, water did not suit him and his health condition was badly deteriorated and unfortunately the petitioner sustained injuries while on duty in the underground due to falling of big coal stone on him and he was given treatment at Area Hospital at Mandamarri and keeping in ICU during the year 2014 and in that incident the petitioner's mother suffered apprehension, fear and "PHOBIA" and he suffered chronic ill-health and he looked after

his ailing mother due which he could not attend to his duties during the 2015 etc., are false and baseless. The respondents are not aware of the said allegations of the petitioner and the respondents denied the same. The petitioner is put to strict proof of the same.

3(b). It is to submit that the attendance particulars for the year 2015 indicate the fact that the petitioner has put in NIL musters and he was absent to his duties throughout the year:-

Sl. No.	Month	Absents	No.of days Absent
1.	January-2015	01 to 31	31
2.	February-2015	01 to 28	28
3.	March-2015	01 to 31	31
4.	April-2015	01 to 30	30
5.	May-2015	01 to 31	31
6.	June-2015	01 to 30	30
7.	July-2015	01 to 31	31
8.	August-2015	01 to 31	31
9.	September-2015	01 to 30	30
10.	October-2015	01 to 31	31
11.	November-2015	01 to 30	30
12.	December-2015	01 to 31	31
	Total		365

Sl. No.	Year	No. of days 30 worked
1.	2010	NIL
2.	2011	NIL
3.	2012	22
4.	2013	10
5.	2014	5

Further, the petitioner is a chronic absentee and he is not interested to do work. He was charge sheeted earlier for his unauthorized absenteeism and imposed punishment of (10) days suspension from duty vide Officer Order dt.25.07.2016. As the petitioner remained absent from duty without any sanctioned leave during the Calendar year 2015, he was issued charge sheet dt.27.07.2016.

3(c). Further, as the petitioner was not attending to his duties, the charge sheet was send through registered post with acknowledgement due to his address Postal Address, but the same has been returned as un-delivered by the postal authorities. It is further submitted that the Petitioner was called for Counseling on 28.07.2016 but the Petitioner failed to attend the counseling. And the Petitioner was also given (03) months time from 01.08.2016 to improve attendance but the Petitioner failed to report for duty. It is to submit that since the petitioner was not attending the duty and the Registered Post was returned as undelivered, the letter of Charge sheet-cum-enquiry notice were published in Telugu Daily News Paper "ANDHRA JYOTHI" dt.19.10.2016 advising the petitioner to attend for an enquiry fixed on 27.10.2016 at 11.30 a.m. in the Office of the SOM RK-1A Incline along with witnesses and documents, if any, to defend his case or otherwise ex-parte enquiry will be conducted. The petitioner has neither attended the enquiry nor sent any representation or representative on the schedule date, time and place as published in the News Paper and did not seek adjournment of the enquiry expressing his inability to attend the enquiry, as such, the enquiry was conducted ex-parte. Thus, the petitioner did not put-in required number of musters of (190) per year during 2015 & 2016. He had neither improved his performance even after issuing the charge sheet nor utilized the opportunities offered by the Management and could not make use of them and he continued his persistent and habitual absence from his duties.

3(d). It is submitted that since he has not put-in the required minimum musters and there were no extenuating circumstances to take lenient view, the Respondent Company after issuance of show cause notice dt.01.06.2017, was constrained to dismiss the petitioner from service with effect from 09.11.2017, vide order No. MMR/PER/D/O72/17I6079, dt:26.10.2017 since persistent and habitual absenteeism was absolutely reasonable cause for the termination of his services by duly following the service rules in vogue. Further, it is submitted that the Respondents'-Company employees about 51,000 persons, which includes workmen, executives and supervisors. The production results will depend upon the overall attendance and performance of each and every individual. They are inter-linked and inseparable. In this regard, if any one remains absent, without prior leave or without any justified cause, the work to be performed gets hampered very badly. No establishment can work effectively, if its employees are irregular in attendance as it cords the very potentiality, credibility and productivity. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up and already planned schedules get suddenly disturbed.

That is the reason why, the Respondents'-Company is compelled to take justifiable action against the unauthorized absentees after extending reasonable opportunities to improve.

3(e). It is to submit that the petitioner/workman is one such un-authorized absentee who failed to improve his performance even after giving several opportunities. The petitioner/workman did not take use of the fair opportunities provided to him to improve his performance in the subsequent year also. As such, the Management lost confidence on the petitioner due to his habitual and persistent absence from duties. Hence, the Respondent Company was constrained to dismiss the petitioner/workman from the company with effect from 09.11.2017 vide order No.MMR/PER/D/072/17/ 6079, dt.26.10.2017, which is justified. The other allegations of the petition are denied and the Respondents'-Company prayed to dismiss the petition, without granting any relief to the petitioner.

4. In support of the claim of the Petitioner/Workman, he got marked Ex.W-1 to Ex.W-8 and on the other side for the Respondents'-Company Ex.M-1 to Ex.M-12 were marked.

5. Arguments of the learned counsel for Petitioner/workman as well as learned counsel for the Respondents/Management heard. Perused the record produced before this Tribunal, written arguments and citations.

6. Now the points for consideration are:-

1. ***Whether the domestic enquiry conducted by the respondents is held valid or not?***
2. ***Whether the charge leveled against the petitioner is proved basing on evidence or not?***
3. ***Whether the dismissal order dt.26.10.2017 is liable to be set aside, if so, the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?***

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents'-Company, these are the admitted facts that the petitioner/workman worked as Badli-Filler (Underground) in the Respondents'-Company and he was dismissed from service. Ex.M-1 is the Proceedings of the Enquiry (04) pages, Ex.M-2 is the Report of Enquiry Officer (04) pages, Ex.M-3 is the Charge Sheet, Ex.M-4 is the (03) Months observation letter, Ex.M-5 is the Un-served Postal Cover, Ex.M-6 is the Letter of Paper Publication annexed with Charge Sheet-cum-Notice and publication mater published in ANDHRA JYOTHI Telugu Daily News Paper, dt.19.10.2016, Ex.M-7 is the Paper publication in ANDHRA JYOTHI, Ex.M-8 is the letter advising the petitioner to submit his comments on the enquiry within (07) Days notice, Ex.M-9 is the letter to respondent to take Disciplinary against the petitioner, as (07) days notice period completed, Ex.M-10 is the Proceedings of dismissal (03) pages, Ex.M-11 is the name removal order and Ex.M-12 is the Postal acknowledgement. On the other side, the petitioner got marked Ex.W-1 to W-8 on their behalf. Ex.W-1 is Provision of employment to minor male dependants kept on live roaster, Ex.W-2 is the registered Proforma showing petitioner's name at Sl.No.01, Ex.W-3 is the Office Order appointing the petitioner, in place of his deceased father, Ex.W-4 is the Posting Order, Ex.W-5 is the Charge sheet-cum-Enquiry notice, Ex.W-6 is the Dismissal Order issued by the respondent No.2, Ex.W-7 is the Name removal order issued by R-1 and Ex.W-8 is the O/c. of Demand letter with R.P receipts. The above documents of both sides are not in much dispute by either side.

8. Here, the learned counsel for the respondents'-company has strenuously argued that the petitioner was appointed as Badli Filler during the year 2012 at KTK 2-Incline. It is false to allege that the respondents'-company utilized the services of the petitioner in the absentee vacancy of regular coal fillers. It is true the respondent No.2 dismissed the petitioner from his service due to his chronic absenteeism in attending his duties even after giving several opportunities to improve his attendance.

8(a). Further, the learned counsel for the respondents'-company argued that all the contentions of the petitioner/workman that he is the only son, his father expired while in service and there was nobody to look after his ailing mother are all false and incorrect. Further, his contentions that his father worked at Bhupalpally area, the petitioner and his mother were residing at Bhupalpally and due his posting to R.K-1A Incline in Mandamarri Area, he was compelled to stay at Mandamarri. But, the underground atmosphere and water did not suit him and his health condition was badly deteriorated are also false and incorrect. His further contention that the petitioner sustained injuries while on duty in the underground due to falling of big coal stone on him and he was given treatment at Area Hospital at Mandamarri and keeping in ICU during the year 2014 and in that incident the petitioner's mother suffered apprehension, fear and "PHOBIA" are false and baseless. The respondents are not aware of the said allegations of the petitioner and the respondents denied the same. The petitioner is put to strict proof of the same.

8(b). Further, the learned counsel for the respondents'-company argued that the petitioner has put in NIL musters during the year 2015. The petitioner was charge sheeted earlier for his unauthorized absenteeism and imposed punishment of (10) days suspension from duty vide Officer Order dt.25.07.2016. As the petitioner remained absent from duty without any sanctioned leave during the Calendar year 2015, he was issued charge sheet dt.27.07.2016. As the petitioner was not attending to his duties, the charge sheet was sent to him by registered post; but, the same was returned un-delivered by the postal authorities. The petitioner was called for counseling on 28.07.2016 but he failed to attend the counseling. He was given (03) months time from 01.08.2016, to improve attendance but the petitioner

failed to report for duty. Since the petitioner was not attending the duty, the letter of Charge sheet-cum-enquiry notice were published in Telugu Daily News Paper "ANDHRA JYOTHI" dt.19.10.2016 advising the petitioner to attend for an enquiry fixed on 27.10.2016 to defend his case; or otherwise ex-parte enquiry will be conducted. The petitioner has neither attended the enquiry nor sent any representation or representative on the schedule date and did not seek adjournment of the enquiry. As such, the enquiry was conducted ex-parte. The petitioner did not put-in required number of musters of (190) per year during 2015 & 2016.

8(c). The learned counsel for the respondents'-company also argued that since the petitioner/workman has not put-in the required minimum musters and there were no extenuating circumstances to take lenient view, the respondents'-company after issuance of show cause notice dt.01.06.2017, dismissed the petitioner from service with effect from 09.11.2017 by order dt.26.10.2017, duly following the service rules in vogue. The Respondents'-Company employed about 51,000 persons, which includes workmen, executives and supervisors. The production results will depend upon the overall attendance and performance of each and every individual. They are inter-linked and inseparable. If anyone remains absent, without prior leave or without any justified cause, the work to be performed gets hampered very badly. No establishment can work effectively, if its employees are irregular in attendance as it cords the very potentiality, credibility and productivity. Due to such unauthorized absence, already planned schedules get suddenly disturbed. Hence, the Respondents'-Company is compelled to take justifiable action against the unauthorized absentees after extending reasonable opportunities to improve. The petitioner/workman is one such unauthorized absentee, who failed to improve his performance even after giving several opportunities. The petitioner/workman did not take use of the fair opportunities provided to him to improve his performance in the subsequent year also. Hence, the Respondent Company was constrained to dismiss the petitioner/workman from the company with effect from 09.11.2017 by order dt.26.10.2017, which is justified. The other allegations of the petition are denied and the respondents' company prays to dismiss the petition

9. Per contra, the learned counsel for the Petitioner/workman contended that the Petitioner/Workman was appointed in the Respondents'-Company during the year 2012 as Badili Filler in place of his deceased father Uppula Rajaiah, Ex.Coal Filler, who died while in service during in the year 2006. The petitioner's name was kept on live roaster and after attaining (18) years of age, he was provided dependant employment in place of late father, vide Office Order dt.21.10.2011. After completing basic job training at MVTC, he was posted to work as Badli Filler (Under Ground), vide Officer Order dt.21.05.2012, in the absentee vacancies of regular Coal Fillers. Further, the petitioner was the only son, his father expired while in service and there is nobody to look after his ailing mother. As his father worked in Bhupalpalli Area, the petitioner and his mother were residing at Bhupalpalli. But, due to his posting to RK.1A Incline in Mandamarri Area, the petitioner was compelled to stay at Mandamarri. But, as the underground atmosphere and water of Mandamarri Area did not suit him, his health condition was badly deteriorated. Further, he sustained injuries while on duty in the underground due to felling of big Coal Stone on him. He was given treatment in the Area Hospital Mandamarri, by keeping him ICU during the year 2014. On that incident, the petitioner's mother suffered apprehension, fear and "Phobia". Further, the petitioner suffered from chronic ill-health and he had to look after his ailing mother and as such, he could not attend to his duties during the year 2015. But, the respondent No.1 issued charge sheet dt.27.07.2016 alleging "25.31: *Absence from duty without sanctioned leave or sufficient cause or over staying beyond sanctioned leave*".

9(a). The learned counsel for the petitioner further contended that due to ill-health of the petitioner and chronic ill-health of his ailing mother, the petitioner was unable to perform duty regularly during the charge sheet period. Further, the petitioner was given duty from 21.05.2012 but his attendance during the years 2010 and 2011 was shown as "NIL" in the Charge Sheet which is false and highly misconceived. Due to ill-health, the petitioner became very weak and there is reasonable and sufficient cause for his absence during the charge sheet period and it cannot be termed as misconduct. But, the respondent No.2 dismissed him from his service vide Proc. dt.26.10.2017 with effect from 09.11.2017, which is highly arbitrary and against the basic principles of natural justice.

9(b). Further, the learned counsel for the petitioner contended that the capital punishment of dismissal from service was imposed on the petitioner/workman, without issuing any prior show cause notice proposing the said punishment of dismissal from service. It is against the settled Law and contrary to the principles of natural Justice. Further, the extreme punishment of dismissal from service is highly excessive and shockingly disproportionate. It amounts to the economic death of the petitioner, which is not warranted and deserves to be set aside by this Court. The petitioner is out of employment and could not secure any other alternative job inspite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prays to set aside the dismissal order dt.26.10.2017 passed by the respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all other consequential attendant benefits and full back wages.

POINT No.1:

10. In this matter, initially the petitioner/workman denied the validity and legality of the enquiry report. But, on 13.06.2023, the learned counsel for petitioner filed memo under Sec.11-A of I.D Act by accepting the procedure of domestic enquiry against the petitioner, hence, this Tribunal holding the domestic enquiry is valid. However, this is a

beneficial legislation and social legislation and in view of settled law, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3:

11. In view of the pleadings of the Petitioner/Workman as well as Respondents/corporation as well as in view of the arguments of their respective counsel now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by Proc. dt.26.10.2017 wherein it is alleged that the petitioner was absent from duty without sanctioned leave or sufficient cause during the year 2015.

12. A perusal of the record, it is evident that the petitioner and (2) other minor dependants of deceased SCCL-workmen were kept on Live Roaster and their particulars were called for in the revised Proforma, by letter dt.07.12.2010 which is marked as Ex. W-1. Further, the petitioner/workman was appointed as Badli Coal Filler to work at Mandamarri Area, by Office Order dt.21.10.2011 which is marked as Ex.W-2. It appears from this appointment order that the petitioner will be given employment in the absentee vacancies of Coal Fillers and he will be shown work as and when available and that he was to find-out the work in place of permanent coal fillers who are temporarily absent. Further, it is also mentioned in the appointment order that the petitioner will be paid wages on piece rate base, on the days he was engaged on coal filling against the absentee vacancies. Further, the petitioner/workman and (1) other dependant who have completed basic job training at MVTC were posted to RK.1A incline, by Office Order dt.21.05.2012, which is marked as Ex.W-3 that he was called for screening test on 08.11.2013 and he was examined by Ortho surgeon and physician of the respondents company, as per the counter filed by the respondents. Hence, it is clear that the petitioner/workman was joined duty as Badli Coal Filler during May 2012 only and hence the allegation that he put in (--) i.e., "Nil" musters during the years 2010 and 2011 as mentioned in the charge sheet under Ex M-3 and counter of the respondents is not correct and misconceived, since the petitioner was given job vide office order dt.21.05.2012 only which is marked as Ex W-4; and further he was not on the rolls of the respondents' company during the previous years 2010 and 2011.

12(a). Apart from the above, a perusal of Ex.M-1 proceedings of enquiry shows that as the Petitioner/Workman did not attend the domestic enquiry, exparte enquiry was conducted. Further, the (3) months observation letter dt.29.07.2016 under Ex.M-4 was returned un-served by the postal authorities, which is marked as Ex.M-5. Charge sheet-cum-enquiry notice under Ex.M-6 was published in the News Paper which is marked as Ex.M-7. Further, the petitioner was asked to submit his representation if any, on the enquiry findings report under Ex.M-8 and (7) days notice was given under Ex. M-9. Accordingly, the petitioner/workman was dismissed from service by Proc. dt.26.10.2017 which is marked as Ex. M-10 and the name removal letter is marked as Ex. M-11 and the postal acknowledgement is marked as Ex. M-12. All the documents marked as Ex. M-1 to Ex.M-12 on behalf of the respondents are attested photo-copies. Therefore, as per Ex.M-4 enquiry report as well as material on record, it shows that the petitioner had not put in minimum required musters of 190 while he was in duty from the date of his appointment. On the other hand, the petitioner submitted that due to ill-health and chronic ill-health of his ailing mother, he was unable to perform duty regularly during the charge sheet period and submitted medical certificate. Hence, it is clear that from the record that the petitioner has not attended to duties regularly. Hence, the charges leveled against the petitioner are proved. Therefore, it can be said that the respondents/ corporation has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charges leveled against the petitioner/workman are proved and misconduct of the workman is established basing on the evidence and findings of enquiry officer are not perverse. Moreover, this is not the case of loaded dice situation against the petitioner by the respondents/ corporation.

12(b). Apart from the above, the contention of the Petitioner/ Workman is that he was appointed as Badli Coal Filler in the year 2012 in place of his deceased father who died while in service and that he served the company only for (3) years, this is his very 1st dismissal from service and he hails from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case under section 11-A of I.D., Act.

13. In support of the above contentions, the learned counsel for the petitioner/workman has relied upon a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:

"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. Merely because workman approached to Labour Court with delay, relief cannot be denied. No indication in the Act that delay extinguishes right conferred on the workmen under Industrial Law. The Labour Court is conferred with very wide discretion under section 11-A. The Industrial Court conferred with very wide discretion under section 11-A of the Act for granting appropriate relief".

14. Therefore, in view of the above decisions and the facts and circumstances of the case, if we come to quantum of sentence it is settled law that the discretion of which can be exercised under section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. Therefore, in

the present case on hand, a perusal of record, it shows that this is the very 1st dismissal from service of the petitioner. Further, the petitioner submitted that he hail from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case under section 11-A of I.D., Act. Hence, in view of the above circumstances of the case, this Tribunal is of the opinion that the punishment imposed by the respondents/company against the Petitioner deserves to be set aside since the disciplinary authority cannot be permitted to act arbitrarily and work like a Roman Knight and it cannot be allowed a fight between David and Goliath as in the present case on hand.

15. Therefore, in view of the above facts and circumstances and keeping in view of the principle “*temper justice with mercy*” and to meet the ends of justice, this Tribunal is of the opinion that the punishment imposed on the Petitioner vide the Proceedings, dt.26.10.2017 under Ex.M-10 deserves to be set aside. However, since the charge leveled against the petitioner is proved, the relief is to be molded by this Tribunal properly and this Tribunal is of the considered opinion that the Petitioner is entitled to be reinstated into service. However, the petitioner is not entitled to any back wages or any attendant benefits since the petitioner might have gainfully employed during pendency of this Industrial Dispute from the date of dismissal of petitioner. Hence, the punishment imposed by the Respondents company is hereby set aside. Accordingly, the Point No.2 & 3 are answered.

16. **IN THE RESULT**, the petition is partly allowed. The removal order, dt.26.10.2017 under Ex.M-10 passed by the Respondent No.2 is hereby set aside by modifying the punishment of dismissal from service appropriately. The respondents/company is directed to reinstate the petitioner into service only, but without any continuity of service, without any attendant benefits and without any back wages from the date of his dismissal to till date. The petitioner is entitled to the salary only from the date of publication this Award. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation by Senior Stenographer, corrected and pronounced by me in the open court, on this the 20th day of October, 2023.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer,

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-

-Nil-

FOR MANAGEMENT:-

-Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	07.12.2010	Provision of employment to minor male dependants kept on live roaster.
Ex.W-2	Dt.	07.10.2010	Proforma showing petitioner's name at Sl.No.01.
Ex.W-3	Dt.	21.10.2011	Office Order appointing the petitioner, in place of his deceased father.
Ex.W-4	Dt.	21.05.2012	Posting Order.
Ex.W-5	Dt.	21.05.2012	Charge sheet-cum-Enquiry notice
Ex.W-6	Dt.	26.10.2017	Dismissal Order issued by the respondent No.2.
Ex.W-7	Dt.	08.11.2017	Name removal order issued by R-1.
Ex.W-8	Dt.	03.07.2018	O/c. of Demand letter with RP receipts.

FOR MANAGEMENT:-

Ex.M-1	Dt.	27.07.2016	Proceedings of the Enquiry 4 pages
Ex.M-2	Dt.	27.07.2016	Report of Enquiry 4 pages
Ex.M-3	Dt.	27.07.2016	Charge Sheet
Ex.M-4	Dt.	29.07.2016	3 Months observation letter.
Ex.M-5	Dt.	29.08.2016	Unserved postal Cover
Ex.M-6	Dt.	17.09.2016	Letter of Paper Publication Annexed with Charge Sheet-cum-Notice and publication mater published in Adhdra Jyothi Telugu Daily News

			Paper, dt.19.10.2016
Ex.M-7	Dt.	19.10.2016	Paper publication in Andhra Jyothi
Ex.M-8	Dt.	01.06.2017	7 Days notice to the petitioner
Ex.M-9	Dt.	28.07.2017	Disciplinary action 7days notice
Ex.M-10	Dt.	26.10.2017	Letter of dismissal 3 pages
Ex.M-11	Dt.	08.11.2017	Name removal order
Ex.M-12	Dt.	07.03.2018	Postal acknowledgement